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SAN JOSE

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15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 ELIZABETH HOLMES and RAMESH  
19 "SUNNY" BALWANI,

20 Defendant.

) Case No. 18-CR-00258 EJD

) UNITED STATES' OPPOSITION TO  
) DEFENDANT RAMESH "SUNNY" BALWANI'S  
) MOTION TO SEVER

) Date: February 10, 2020  
) Time: 10 a.m.  
) Courtroom: 4, 5<sup>th</sup> Floor

) FILED PROVISIONALLY UNDER SEAL  
) PURSUANT TO COURT ORDER OF JANUARY  
) 13, 2020

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## INTRODUCTION

Defendant Ramesh Balwani's motion to sever is premature and unsupported, and should be denied. "Co-defendants jointly charged are, *prima facie*, to be jointly tried." *United States v. Doe*, 655 F.2d 920, 926 (9th Cir. 1980). This is particularly true in conspiracy cases. A defendant seeking severance "must demonstrate that a joint trial is so manifestly prejudicial that it outweighs the dominant concern with judicial economy and compels the exercise of the court's discretion to sever." *Id.* at 926 (quotation omitted).

Balwani's motion is based on the false premise the Court will admit expert and other evidence that Holmes suffered from mental conditions caused by his alleged abuse. Based on the limited record, the Court should not do so.

Nor does the evidence support Dr. Mechanic's conclusions that Balwani controlled, manipulated, and abused Holmes.

The Court should not decide to sever the trial based on this record. To the extent the Court has questions regarding Dr. Mechanic's potential testimony, the government requests the Court set a *Daubert* hearing.

Even assuming arguendo that some portion of Dr. Mechanic's testimony were admitted after a *Daubert* hearing, Balwani fails to show this will manifestly prejudice him. The Court may elect to limit portions of Dr. Mechanic's testimony because of Rule 403 considerations. And this Court's "careful and frequent limiting instructions to the jury, explaining how and against whom certain evidence may be considered, can reduce or eliminate any possibility of prejudice arising from a joint trial." *United States v. Fernandez*, 388 F.3d 1199, 1243 (9th Cir. 2004).



Balwani's additional arguments for severance fail. A desire not to investigate a co-defendant's allegation is not a cognizable basis for severance. Balwani also has not shown that Holmes's defense is "so irreconcilable with the core of his own defense that the acceptance of the codefendant's theory by the jury precludes acquittal of the defendant," *United States v. Throckmorton*, 87 F.3d 1069, 1072 (9th Cir. 1996), or that his confrontation rights will be compromised.

Even if Balwani could show the manifest prejudice required, he ignores an appropriate remedy short of severance: empaneling dual juries, a practice which is widely used and accepted in the Ninth Circuit. *Lambright v. Stewart*, 191 F.3d 1181, 1185 (9th Cir. 1999) (en banc).

Finally, if the Court is inclined to grant severance, the Court should try Holmes first. Balwani has failed to show that this would prejudice him. His claim that Holmes's defense will incurably taint the jury pool (and thus he must go first) is not supported by the record. He makes no showing that current publicity is so pervasive and negative that the Court will be unable to select a fair and impartial jury in this large, metropolitan venue, or that Holmes's allegations would significantly alter that reality. Even if he could, the remedy is voir dire and, if necessary, a change of venue, not censorship. Holmes is the lead defendant in this case and the face of Theranos. The victims, the public, and the interests of justice would be disserved by an indefinite delay in resolving her guilt or innocence.

## PROCEDURAL BACKGROUND AND RELEVANT FACTS

### I. Holmes's Potential Rule 12.2(b) Defense Prompts Balwani's Severance Motion

On September 18, 2019, Holmes's counsel advised counsel Balwani's counsel that she would introduce testimony about the "psychological, emotional, and [REDACTED] she "suffered . . . at the hands of Mr. Balwani." (See Dec. 3, 2019, Decl. of Jeffrey Coopersmith, Exh. A.) In the letter, Holmes's counsel suggested the main argument in favor of severance for Balwani: "because your client has a Sixth Amendment right to a trial in front of a jury free from bias that arises from issues that do not directly relate to *his* guilt or innocence of the offenses alleged." (*Id.* (emphasis in original).)<sup>1</sup>

<sup>1</sup> From the context, it is apparent that the Defendants' coordination was part of a joint strategy to obtain severance. Severance would, of course, serve strategic ends for both: Holmes would have the benefit of previewing the government's entire case-in-chief and having trial transcripts for all the government witnesses should her case proceed second. Balwani would have the strategic benefit of not being tried with the number one defendant in the case—the founder and public face of the company—should he proceed to trial first.

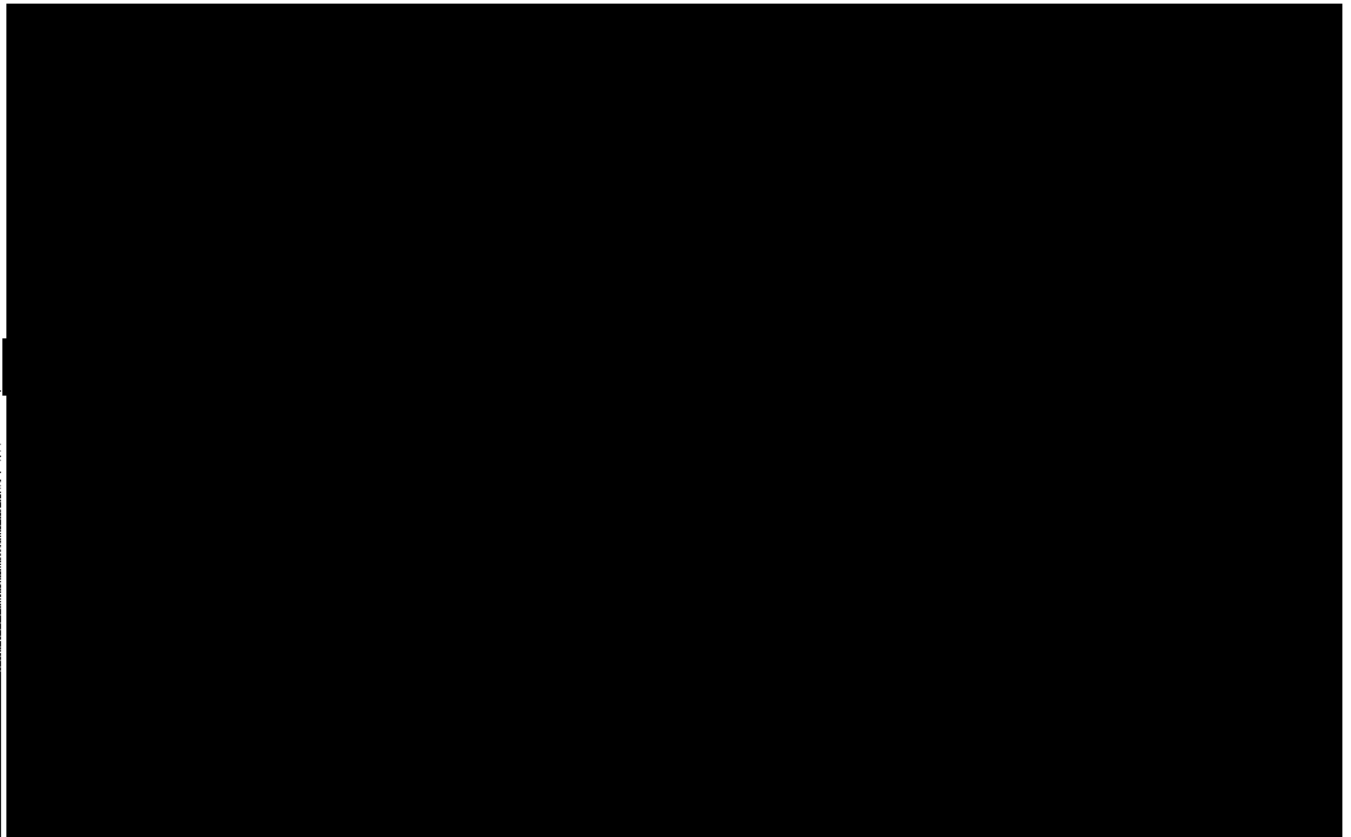


1 Relying entirely on this letter, Balwani moved to sever on December 3, 2019. His first—and  
2 main—argument was exactly the one advanced by Holmes’s counsel: “a joint trial would prevent the  
3 jury from making a reliable judgment about [his] guilt or innocence.” (Balwani Mot. to Sever at 7–8  
4 (internal quotations omitted).)

## 5 **II. Holmes’s Severance Motion and Rule 12.2(b) Notice**

6 On December 16, 2019, Holmes moved to sever, asserting that she would be unable to  
7 participate and present her defense due to the “likely physical, psychological, and emotional effects” of  
8 being in Balwani’s presence during trial, and submitting the unsworn declaration of her expert Dr.  
9 Mindy B. Mechanic. (Holmes Mot. to Sever at 4.) She also filed notice under Rule 12.2(b), stating that  
10 she “may introduce expert evidence at trial related to a mental condition bearing on guilt.”

11 In her unsworn declaration, Dr. Mechanic stated that her opinions were based on approximately  
12 14 hours of in-person interviews and psychological testing with Holmes, conducted at the law offices of  
13 Williams and Connolly in Washington, D.C., as well as interviews of approximately one to two hours  
14 each with Holmes’s parents, also at Williams and Connolly, and an approximately 90-minute interview  
15 with Holmes’s brother in San Francisco. (Mechanic Decl. at 3.)



It does not appear that Holmes provided any materials documenting prior mental health treatment or diagnoses to Dr. Mechanic. (*See* Mechanic Decl. at 3.)

Notably, Dr. Mechanic's declaration did not address the basis for a Rule 12.2(b) defense, nor did Dr. Mechanic opine that Holmes's prior experience of PTSD during the time of the offense would have negated her ability to form the requisite *mens rea* to commit wire fraud. (*See generally* Mechanic Decl.)

### III. Court Orders Holmes to Supplement the Mechanic Declaration to Address Her Rule 12.2(b) Defense During January 13, 2020, Hearing

In its December 30, 2019, administrative motion, the government requested the Court set a schedule for the Rule 12.2 procedures and litigation that would permit the Court to rule on the severance motions after deciding the threshold issue of the admissibility of the Rule 12.2(b) defense and related testimony. During the January 13, 2020, hearing, the government alternatively urged the Court to order Holmes to provide additional support for her Rule 12.2(b) defense before making a final ruling on severance. (Transcript of Jan. 13, 2020, hearing ("Tr.") at 31–32, 37–38, 72–74.) The government noted that the severance motions assumed that the Rule 12.2(b) defense and Holmes's statements detailing her allegations against Balwani would be admitted at trial even though this was not a definite—or even probable—outcome. (*Id.* at 47–48.) The government further highlighted that Holmes had not yet submitted *any* statement from an expert opining that her mental condition at the time of the offense had any bearing on her guilt to commit the charged crime—a prerequisite to establishing the relevance of the allegations against Balwani. (*Id.* at 47.)

At the conclusion of the hearing, the Court ordered Holmes to supplement the Mechanic Declaration by adding "a page or two" to provide "some foundation[]" for the Rule 12.2(b) defense. (*Id.*

1 at 71.) The Court further granted leave to Balwani to supplement his motion to sever to address this  
 2 amended declaration from Dr. Mechanic. (*Id.* at 50–51, 65.)

#### 3 **IV. Holmes’s Amended Mechanic Declaration and Supplemental Rule 12.2(b) Notice**

4 On January 17, 2020, Holmes filed an amended and sworn declaration of Dr. Mechanic. This  
 5 amended declaration provided scant support for her Rule 12.2(b) defense. In her Notice of Submission  
 6 to the Court, Holmes highlighted the one paragraph Dr. Mechanic added to address the Rule 12.2(b)  
 7 defense: the last paragraph of Section XIV on page 11. This paragraph, however, does not address  
 8 Holmes’s mental state or how her mental conditions affected her *mens rea* at the time of the offense.  
 9 Instead, the paragraph provides general conclusions about how “abusers assume a rein of control over  
 10 their victims” and how victims of IPV “are likely to defer to the opinions of the abuser.” (Amended  
 11 Mechanic Decl. at 11.)

12 At the request of the government, Holmes also provided additional notice of her Rule 12.2(b)  
 13 defense. (Baehr-Jones Decl., Exh. 2.) Specifically, in a January 17, 2020, letter, Holmes listed Dr.  
 14 Mechanic as the expert she had engaged for purposes of her Rule 12.2(b) notice. (*Id.*) The letter further  
 15 stated that the Rule 12.2(b) forensic evaluation of Holmes “has consisted or will consist of semi-  
 16 structured and structured interviews,” as well as the “MMPI-2 test.” (*Id.*)

#### 17 **V. Dr. Renee Binder’s Declaration**

18 The government has retained Dr. Renee Binder to opine on Holmes’s noticed Rule 12.2(b)  
 19 defense. [REDACTED]

20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]

28 //

## ARGUMENT

### I. Legal Standard for Severance

The general rule is that defendants jointly charged are jointly tried. *See United States v. Gay*, 567 F.2d 916, 919 (9th Cir. 1978), *cert. denied*, 435 U.S. 999 (1978). This rule applies particularly in conspiracy cases such as this. *United States v. Escalante*, 637 F.2d 1197, 1201 (9th Cir. 1980); *see also Fernandez*, 388 F.3d at 1242 (noting that “a joint trial is particularly appropriate where the co-defendants are charged with conspiracy”). Federal Rule of Criminal Procedure 14 provides that a district court, in its discretion, may grant a severance when it appears that a joint trial would prejudice a defendant. However, “[t]here is a preference in the federal system for joint trial of defendants who are indicted together.” *Zafiro v. United States*, 506 U.S. 534, 537 (1993). Severance is to be granted only if there is a “serious risk that a joint trial would compromise a specific trial right of [a properly joined defendant] or prevent the jury from making a reliable judgment about guilt or innocence.” *Id.* at 539. Because severance is disfavored, “defendants bear a heavy burden when attempting to obtain reversal of a district court’s denial of a motion to sever.” *United States v. Johnson*, 297 F.3d 845, 858 (9th Cir. 2002). “Such decisions will be reversed only when ‘the joint trial was so manifestly prejudicial as to require the trial judge to exercise his discretion [on the motion to sever] in just one way, by ordering a separate trial.’” *Id.* (quoting *United States v. Hanley*, 190 F.3d 1017, 1027 (9th Cir. 1999)).

### II. Holmes Does Not Present a Viable Rule 12.2(b) Defense Requiring Severance

Balwani urges the Court to make a final decision on severance based on a potential defense of his co-defendant that is not viable. As set forth below, courts have permitted evidence to be admitted as part of a “*mens rea*” or Rule 12.2(b) defense in rare and narrowly defined circumstances. Contrary to

1 defense counsel's representation during the January 13, 2020, hearing, the "threshold for admitting such  
 2 evidence" is *not* "very low when the issue goes to *mens rea*." (Tr. at 29.) And it is *not* "likely" that this  
 3 evidence will come in at trial. (*Id.* at 49.) Quite the opposite: Holmes has not, as part of Defendants'  
 4 joint severance strategy, provided a basis for the admissibility of her Rule 12.2(b) defense. Holmes's  
 5 own expert declaration provides no support for admitting this defense, nor does the evidence Holmes  
 6 submitted to her expert—presumably, the best evidence she can find to support the defense. In contrast,  
 7 all the available evidence shows a defendant fully in command of her cognitive abilities and fully able to  
 8 understand the nature and consequences of her actions. There is simply no basis at this juncture for  
 9 admitting evidence in support of this defense.

10 Because Holmes's *mens rea* defense is not admissible, neither are her allegations against  
 11 Balwani. Absent expert testimony connecting these allegations to a mental disorder that tends to negate  
 12 Holmes's intent, the allegations are wholly irrelevant and should be excluded under Federal Rule of  
 13 Evidence 403. Severance is unnecessary.

#### 14 **A. The Limited Admissibility of Psychiatric Evidence to Negate *Mens Rea***

15 A defendant's ability to present a "*mens rea*" defense derives from the Insanity Defense and  
 16 Reform Act (IDRA) of 1984. The Act established an "affirmative defense" when the defendant "as a  
 17 result of a severe mental disease or defect, was unable to appreciate the nature and quality or the  
 18 wrongfulness of his [or her] acts." 18 U.S.C. § 17(a). Congress limited the defense, however, stating  
 19 explicitly in the Act that a defendant's "[m]ental disease or defect does not otherwise constitute a  
 20 defense." *Id.* The statute placed the burden on the defendant to prove the defense "by clear and  
 21 convincing evidence." 18 U.S.C. § 17(b). Additionally, the burden "of showing that proffered  
 22 testimony is offered to negate the *mens rea* element of a crime and not in support of some improper  
 23 defense theory falls squarely on the defendant." *United States v. Baxt*, 74 F. Supp. 2d 436, 441 (D.N.J.  
 24 1999) (citing *United States v. Williams*, 95 F.3d 723, 729 (8th Cir. 1996)); *see also Daubert v. Merrell*  
 25 *Dow Pharm.*, 43 F.3d 1311, 1316 (9th Cir. 1995) (on remand, holding that proponent of expert  
 26 testimony must show that evidence is admissible under standards set forth in the Supreme Court's  
 27 decision); *United States v. Starzecpyzel*, 880 F. Supp. 1027, 1031 (S.D.N.Y. 1995) (stating that the  
 28 proponent of expert evidence bears the burden of producing facts to establish admissibility).

As part of the same statute, Congress also enacted Federal Rule of Evidence 704(b), which prohibits experts from stating an opinion or inference as to the ultimate issue of whether a defendant did or did not have the mental state constituting an element of the charged crime. *See United States v. Cohen*, 510 F.3d 1114, 1125 (9th Cir. 2007) (“Even if expert testimony would ‘assist the trier of fact’ within the meaning of Rule 702, such testimony may be excluded under Rule 704(b) if the testimony ‘state[s] an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged . . . .’”) (quoting Fed. R. Evid. 704(b)).

Courts have consistently cautioned that under the IDRA, the admission of mental defect evidence should be permitted only in rare and narrowly defined circumstances. As the Third Circuit observed in *United States v. Pohlot*:

Only in the rare case, however, will even a legally insane defendant actually lack the requisite mens rea purely because of mental defect . . . . [A] man who commits murder because he feels compelled by demons still possesses the mens rea required for murder. The government’s burden of proving mens rea is therefore considerably less onerous than its previous burden of proving sanity.

827 F.2d 889, 900 (3d Cir. 1987) *cert. denied*, 484 U.S. 1011 (1988), (citations omitted); *United States v. Twine*, 853 F.2d 676, 679 (9th Cir. 1988) (citing *Pohlot* and finding “a careful reading of the 1984 Act and its history persuades us that Congress intended to restrict a defendant’s ability to excuse guilt with mental defect evidence, curtailing the insanity defense”); *see also United States v. Cameron*, 907 F.2d 1051, 1066 (11th Cir. 1990) (only rarely will defendant be able to show lack of *mens rea* due to mental defect); *United States v. Whitehead*, 896 F.2d 432, 436 n.6 (9th Cir. 1990) (“Significantly, the 1984 Act limits the insanity defense to those mental disorders that are ‘severe.’”) (quoting S. Rep. No. 98–225, 98th Cong. 2d Sess. 229); *United States v. Agnello*, 158 F. Supp. 2d 285, 287 (E.D.N.Y. 2001) (where evidence of mental abnormality is offered in support of a legally unacceptable theory of lack of *mens rea*, it must be excluded); *United States v. Mezvinsky*, 206 F. Supp. 2d 661, 664 (E.D. Pa. 2002) (recognizing that the IDRA leaves only a “narrow ray of light” for the admission of psychiatric evidence to negate intent).

Accordingly, “Congress has instructed courts to be extremely cautious” when confronted with an effort to introduce psychiatric evidence to negate intent. *United States v. Richards*, 9 F. Supp. 2d 455, 457 (D.N.J. 1998); *see also Pohlot*, 827 F.2d at 905 (encouraging the careful examination of psychiatric



testimony purportedly offered to negate intent because of the “strong danger of misuse” in this area); *Mezvinsky*, 206 F. Supp. 2d at 665 (same). Such caution is warranted because of the high likelihood that the introduction of such evidence—even if characterized as strictly relevant to negate intent—will result in the resurrection of precisely the kinds of defenses that the IDRA was enacted to prohibit. *See, e.g., Cameron*, 907 F.2d at 1066; *Agnello*, 158 F. Supp. 2d at 287; *Richards*, 9 F. Supp. 2d at 457. *See also United States v. Schneider*, 111 F.3d 197, 203 (1st Cir. 1997) (noting that psychiatric evidence offered to negate intent “tends to reintroduce the very concepts that Congress wanted to exclude and thereby to mislead the jury”); *United States v. Boykoff*, 186 F. Supp. 2d 347, 350 (S.D.N.Y. 2002) (same).

**B. Psychiatric Evidence Must Be Directly Linked to the *Mens Rea* at Issue in a Particular Case to Be Admissible**

In light of the IDRA, a defendant may only present “psychiatric evidence which negates the *mens rea* element of a charged crime.” *United States v. Wescott*, 83 F.3d 1354, 1358 (11th Cir. 1996). Accordingly, in determining whether evidence of a psychiatric impairment is admissible for this purpose, courts have required the defendant to demonstrate clearly, in advance of trial, that there is a direct link between such evidence and the specific *mens rea* that the government must prove. *Cameron*, 907 F.2d at 1067; *Boykoff*, 186 F. Supp. 2d at 349 (recognizing that courts have “refused to admit mental disease evidence where no direct link could be established between it and the issue of *mens rea*”); *United States v. Pirro*, 76 F. Supp. 2d 478, 485 (S.D.N.Y. 1999) (“Mental disease evidence is generally excluded where no link is demonstrated between the evidence and the defendant’s *mens rea* or where the defendant could not demonstrate that he actually lacked *mens rea* at the time of the offense because of any psychological defect.”); *Baxt*, 74 F. Supp. 2d at 440–41 (evidence of impaired judgment is not evidence of a lack of *mens rea*).

It is not enough for a defendant to show that her psychiatric condition adversely affected her state of mind during the relevant time. *See, e.g., Mezvinsky*, 206 F. Supp. 2d at 672–73; *Richards*, 9 F. Supp. 2d at 459 (in embezzlement case, court excluded evidence defendant was suffering from extreme case of Major Depression Disorder which substantially impaired his judgment because no link was established between that evidence and lack of *mens rea*). The defendant must instead show that because of a mental defect at the time she committed the crimes alleged, she did not have the requisite intent to



1 be found guilty. *See, e.g., Agnello*, 158 F. Supp. 2d at 287–88 (court excluded evidence defendant  
 2 suffered from bipolar disorder because defendant “failed to establish the necessary link or fit”).

3 Significantly, “[c]onclusory statements by a defendant[’s experts] about the link between  
 4 psychiatric evidence and the defendant’s *mens rea* at the time the alleged crime was committed do not  
 5 render the evidence admissible.” *Baxt*, 74 F. Supp. 2d at 440; *see also United States v. Bennett*, 161  
 6 F.3d 171, 181, 185 (3d Cir. 1998). Courts determining whether to admit such evidence have instead  
 7 insisted on a reasoned explanation, based on the relevant facts and sound scientific principles,  
 8 demonstrating that a defendant lacked the requisite intent to commit the alleged offenses at the time of  
 9 those offenses. “This burden of showing that proffered testimony is offered to negate the *mens rea*  
 10 element of a crime and not in support of some improper defense theory falls squarely on the defendant.”  
 11 *Baxt*, 74 F. Supp. 2d at 441 (citing *United States v. Williams*, 95 F.3d 723, 729 (8th Cir. 1996)).

12 In giving effect to the legislative judgments reflected in the IDRA, courts have relied on Rule  
 13 702 and the standards articulated by the Supreme Court in *Daubert* to exclude expert psychiatric  
 14 evidence that does not actually negate the particular form of *mens rea* that must be established in a given  
 15 case. As the court explained in *United States v. Towns*:

16 While the rules allow for expert testimony relating to *mens rea* under certain  
 17 circumstances, *Daubert* makes it clear that the proffered expert testimony must  
 18 have some valid scientific connection to the facts of the case in order to be helpful  
 to the finder of fact, and therefore relevant.

19 19 F. Supp. 2d 67, 71 (W.D.N.Y. 1998) (internal citations omitted). Where expert psychiatric testimony  
 20 does not demonstrate a lack of *mens rea* at the relevant time, but instead serves only to explain or justify  
 21 a defendant’s conduct, courts have consistently excluded such evidence as failing to meet the  
 22 requirements of relevance and helpfulness under Rule 702 and *Daubert*. *See Mezvinsky*, 206 F. Supp. 2d  
 23 at 674; *United States v. Pendergraft*, 120 F. Supp. 2d 1339, 1344 (M.D. Fla. 2000); *Boykoff*, 186 F.  
 24 Supp. 2d at 349; *United States v. Griffin*, No. (S6) 94 CR. 631 (AGS), 1996 WL 140073, at \*10–11  
 25 (S.D.N.Y. Mar. 27, 1996).

26 In *United States v. Scholl*, for example, the Ninth Circuit upheld limitations on expert testimony  
 27 under Rule 12.2(b) that did not explain how the disorder would undermine a defendant’s intentional  
 28 criminal conduct. 166 F.3d 964, 970 (9th Cir. 1999). There, the defendant, who was charged with filing

1 false tax returns, argued that the district court had erred in excluding under Rule 702 the testimony of an  
 2 expert on compulsive gambling who would have testified that pathological gamblers, like the defendant,  
 3 “have distortions in thinking and ‘denial,’ which impact their ability and emotional wherewithal to keep  
 4 records.” *Id.* The Ninth Circuit affirmed, noting that there was no evidence presented at the *Daubert*  
 5 hearing that addicted gamblers were incapable of truthfully reporting their gambling income. *Id.*  
 6 “[E]vidence that compulsive gamblers are in denial . . . would not tend to show that Scholl did not  
 7 believe his tax return to be correct.” *Id.* at 971.

8 Moreover, even where proffered psychiatric evidence has some relevance to the issue of *mens*  
 9 *rea*, it may be excluded for failing the test of admissibility under Rule 403. As discussed above, the  
 10 courts have often recognized that the use of mental disease evidence to negate specific intent “tends to  
 11 reintroduce the very concepts that Congress wanted to exclude [in enacting the IDRA] and thereby to  
 12 mislead the jury.” *Schneider*, 111 F.3d at 203. Such evidence “presents an inherent danger that it will  
 13 distract the jury from focusing on the actual presence or absence of *mens rea*.” *Cameron*, 907 F.2d at  
 14 1067. As the court cautioned in *Pohlot*:

15 Psychiatrists are capable of supplying elastic descriptions of mental states that  
 16 appear to but do not truly negate the legal requirements of *mens rea*. Presenting  
 17 defense theories or psychiatric testimony to juries that do not truly negate *mens rea*  
 18 may cause confusion about what the law requires.

19 827 F. 2d at 890. For these reasons, such evidence, even if relevant and helpful under Rules 401 and  
 20 702, is properly excluded under Rule 403 where its capacity to mislead and confuse the jury  
 21 substantially outweighs whatever limited probative value it may have. *See, e.g., Agnello*, 158 F. Supp.  
 22 2d at 289–90 (proffered testimony regarding defendant’s bipolar disorder could mislead the jury into  
 23 thinking such evidence excused the offense); *Griffin*, 1996 WL 140073, at \*10 (“expert psychiatric  
 24 testimony regarding inherently malleable psychological testimony can be misused at trial to mislead or  
 25 confuse the jury”) (internal quotations omitted); *United States v. Vinieris*, 611 F. Supp. 1046, 1049  
 26 (S.D.N.Y. 1985) (excluding proffered psychiatric testimony under Rules 403 and 702 “upon the ground  
 27 that it would not assist the trier of fact to understand the evidence or to determine a fact in issue and that,  
 28 even if relevant, its probative value [was] substantially outweighed by the danger of confusion of the  
 issues or of misleading the jury”).

**C. There Is No Evidence Showing Holmes Had a Severe Mental Disease or Defect That Undermined Her Ability to Form the Intent to Commit Wire Fraud**

Holmes has failed to meet the standard set forth above for admitting evidence in support of a *mens rea* defense. In this case, Holmes is charged with conspiracy to commit wire fraud and wire fraud. The *mens rea* for wire fraud is that Holmes acted with the “intent to defraud.” Ninth Cir. Model Crim. J. Instr. 8.124. This means that she must have acted “knowingly” and “with the intent to deceive or cheat.” *Id.* Therefore, to be admissible under *Daubert* and *Pohl*, Dr. Mechanic’s testimony must address Holmes’s psychological condition at the time of those schemes and how her mental condition then rendered her incapable of deceit. *See Mezvinsky*, 206 F. Supp. 2d at 668 (“Mezvinsky’s *mens rea* defense, therefore, must be probative as to whether he had the mental capacity to form such an intention over the twelve-year course of his alleged two dozen schemes to defraud.”).

**1. Dr. Mechanic’s Amended Declaration Does Not Support a Rule 12.2(b) Defense**

(Amended Mechanic Decl. at 14.) This is exactly the kind of opinion that courts have excluded for failing to address the *mens rea* for the offense. *See, e.g., Mezvinsky*, 206 F. Supp. 2d at 672–73 (“To be sure, [defendant’s] experts are prepared to testify at length that [his] [bipolar disorder] resulted in ‘poor judgment’ and ‘bad choices,’ but none is in a position to state that, at the relevant time, [he] did not have the capacity to deceive.”); *Richards*, 9 F. Supp. 2d at 459 (in embezzlement case, court excluded evidence defendant suffered extreme case of Major Depression Disorder which substantially impaired his judgment because no link was established between that evidence and supposed lack of *mens rea*).

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED] See *United States v. Byers*, 730 F.2d 568, 571 (9th Cir. 1984) (affirming  
 6 the exclusion of “ambiguous” psychiatric testimony that would not “have materially assisted a jury in  
 7 determining whether Byers committed a voluntary, intentional violation of known legal duty”).

8 [REDACTED]  
 9 [REDACTED] expert opinions the Ninth Circuit has held probative and admissible to a *mens rea* defense.  
 10 In *United States v. Cohen*, for instance, the Ninth Circuit held that the expert opinion directly connected  
 11 the defendant’s disorder with his ability to form the “willfulness” necessary to commit tax fraud—a  
 12 higher level of intent than required for wire fraud. 510 F.3d at 1123. There, the defense psychiatrist  
 13 described Cohen as “irrational to the point of dysfunction,” and directly tied this condition to Cohen’s  
 14 inability to have a criminal “will.” *Id.*; see also *United States v. Sandoval-Mendoza*, 472 F.3d 645 (9th  
 15 Cir. 2006) (both government and defense experts agreed that defendant suffered from an actual,  
 16 unusually large pituitary tumor that compressed defendant’s frontal lobe, causing brain damage with  
 17 demonstrated impacts on his reasoning processes).

18 [REDACTED] those excluded by the district court in  
 19 *United States v. Cruz-Ramirez*, No. CR 08-0730 WHA, 2011 WL 2446278 (N.D. Cal. June 17, 2011).  
 20 There, the court held the proposed expert testimony had “quite minimal” probative value where one of  
 21 the defense experts admitted that he “did not purport to address a number of issues that might be raised  
 22 in a criminal case, such as mental state at the time of the crime, insanity, or competence to stand trial.”  
 23 *Id.* at \*5. The expert further admitted that his testing/evaluation results were “not definitive” and “a  
 24 broader assessment would have been required” to examine issues like *mens rea* and insanity. *Id.* The  
 25 court ultimately excluded both proposed defense experts under Rule 403, finding the minimal probative  
 26 value would have been outweighed by the confusion generated from extensive examination and cross-  
 27 examination about vague diagnoses with little relevance to the charged conduct. *Id.* at \*6.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] These are

9 materials the Court should have the opportunity to review before deciding severance.

10 Based on what is currently before the Court, Holmes has not provided any admissible expert  
11 testimony in support of her potential Rule 12.2(b) defense.

12 **2. Evidence Provided to Dr. Mechanic Does Not Support a Rule 12.2(b) Defense**

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27  
28 <sup>2</sup> The government asked Dr. Binder to review only the evidence provided to Dr. Mechanic for purposes of responding to the severance motions.

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19                   3.       **Evidence Holmes Failed to Provide to Dr. Mechanic Shows She Understood  
the Nature and Quality of Her Actions**

20 [REDACTED]

21 [REDACTED] Holmes also failed to provide Dr. Mechanic with critical evidence that Holmes knew exactly  
22 what she was doing when she committed the fraud. For example, the government has produced  
23 numerous videos of media interviews Holmes gave during the time of the alleged fraud. In the videos,  
24

25 [REDACTED]

26 [REDACTED]

27                   <sup>4</sup> This text occurred on the same day Holmes said at a *Wall Street Journal* conference, "We have  
28 never used commercially available lab equipment for fingerstick-based tests." See  
<https://www.wsj.com/video/full-interview-theranos-ceo-elizabeth-holmes/B3D6EAD3-02E9-4C0C-A230-297DE5ADECF3.html>.



1 Holmes appears to understand the nature of her actions, the consequences of her mistakes, and even  
2 shows remorse for Theranos's failures in lab safety.

3 For example, after *The Wall Street Journal* article broke on October 15, 2015, Holmes appeared  
4 on CNBC *Mad Money* and, during a nearly ten-minute interview, defended Theranos, at one point  
5 claiming falsely, "I was personally shocked to see that the *Journal* would publish something like this  
6 when we had sent them over a thousand pages of documentation demonstrating that the statements in  
7 their piece were false." (Baehr-Jones Decl., Exh. 3, *available at*: [https://www.cnbc.com/2015/10/15/](https://www.cnbc.com/2015/10/15/theranos-ceo-fires-back-at-wsj-i-was-shocked.html)  
8 [theranos-ceo-fires-back-at-wsj-i-was-shocked.html](https://www.cnbc.com/2015/10/15/theranos-ceo-fires-back-at-wsj-i-was-shocked.html).) In an interview with Maria Shriver for the *Today*  
9 *Show* on April 18, 2016, Holmes accepted responsibility for the failures in lab safety and accuracy that  
10 prompted the CLIA shutdown. (Baehr-Jones Decl., Exh. 4, *available at*: [www.today.com/](http://www.today.com/video/theranos-ceo-elizabeth-holmes-i-m-devastated-about-blood-test-issues-668286019825)  
11 [video/theranos-ceo-elizabeth-holmes-i-m-devastated-about-blood-test-issues-668286019825](http://www.today.com/video/theranos-ceo-elizabeth-holmes-i-m-devastated-about-blood-test-issues-668286019825).) Holmes  
12 stated to Ms. Shriver, "I feel devastated that we did not catch and fix these issues faster." Ms. Shriver  
13 then asked whether Holmes held herself responsible. She responded, "I'm the founder and CEO of this  
14 company, anything that happens in this company is my responsibility at the end of the day."

15 These videos reveal a person adeptly answering questions and articulating justifications for the  
16 fraud. This is precisely the kind of evidence that would be probative of her mental state and her intent at  
17 the time of the crime. *See United States v. Hiebert*, 30 F.3d 1005, 1007 (8th Cir. 1994) ("A defendant's  
18 attempt to conceal his commission of a crime suggests that he knows the action is wrongful, and the  
19 defendant's knowledge that one crime was wrong evidences that he understood that other criminal acts  
20 were inappropriate.") (citations omitted); *United States v. Barton*, 992 F.2d 66, 69 (5th Cir. 1993)  
21 (defendant's apologies for his actions were indicative of his ability "to determine right from wrong");  
22 *United States v. Freeman*, 804 F.2d 1574, 1577 (11th Cir. 1986) (defendant's efforts to avoid  
23 apprehension demonstrated he "knew his conduct was wrongful"). Yet, Holmes showed none of these  
24 videos to Dr. Mechanic. This raises important questions about the reliability of Dr. Mechanic's  
25 opinions. Would her opinion change if she considered Holmes's presentation in these public media  
26 appearances? In her expert opinion, is this the type of evidence that would be useful to review in  
27 assessing a defendant's ability to form the intent to deceive? Again, the Court should have answers to  
28 these threshold questions before deciding severance.



**D. Holmes's Self-Serving Statements Are Inadmissible Under Federal Rules of Evidence 401, 402, 403, and 702**

[REDACTED] the only evidence Holmes has presented in support of her Rule 12.2(b) defense are her own, self-serving statements alleging that abuse by her co-conspirator undermined her ability to commit the conspiracy.<sup>5</sup> These statements, on their own, however, are inadmissible under Rules 401, 402, 403, and 702.

**1. Holmes's Allegations Against Balwani Are Not Relevant Absent Expert Testimony**

[REDACTED]

[REDACTED] "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. "Irrelevant evidence is not admissible." Fed. R. Evid. 402.

A fact witness is not permitted to offer opinion testimony within the purview of an expert witness pursuant to Rule 702. Thus, absent Dr. Mechanic's testimony, no fact witness will be able to opine that Holmes's experience of PTSD, anxiety, and depression undermined her intent to deceive. Without this connection between Holmes's purported mental conditions and her ability to form the requisite intent, her allegations of abuse at the hands of Balwani are entirely irrelevant. These allegations are only arguably relevant—and even then, minimally so—if they tend to show that Holmes experienced IPV which triggered the mental conditions allegedly undermining her *mens rea*. Absent this chain of connections, which can only be explained through expert testimony, the allegations have no tie to the charged conduct or to any other defense.<sup>6</sup> Indeed, one of the most arguably prejudicial allegations, [REDACTED]—on which Balwani relies to request severance—[REDACTED]

This case is therefore not like *United States v. Haischer*, 780 F.3d 1277 (9th Cir. 2015), on which Holmes relies. (Holmes Opp. to Gov. Admin. Mot. to Set Deadlines at 3.) There, Haischer claimed,

<sup>5</sup> The government assumes that Holmes has submitted an *ex parte* proffer setting forth her potential trial testimony that includes the allegations summarized in Dr. Mechanic's declaration.

<sup>6</sup> Counsel for Holmes stated at the January 13, 2020, hearing that she was *not* advancing a duress defense.

initially as part of a duress defense and then later as part of a *mens rea* defense, that her co-defendant Nunes had abused her. *Id.* at 1280. Haischer's sister testified that she heard Nunes yelling at Haischer to sign some papers, which Haischer then testified were for the relevant fraudulent loan application. *Id.* Haischer's sister further testified that Nunes refused to allow Haischer to be taken to see a doctor for a badly swollen leg, which X-rays showed was badly broken, until she signed the papers. *Id.* The alleged abuse was therefore connected directly and factually to the fraud.

Here, the alleged abuse is only tied to the fraud through Dr. Mechanic's testimony. Since Dr. Mechanic's opinion—at least at this juncture—does not support the Rule 12.2(b) defense, Holmes's allegations are also inadmissible.

## 2. Holmes's Allegations Are Minimally Relevant Even If Expert Testimony Is Admitted and Should Therefore be Excluded Under Rule 403

Even if some form of expert testimony were admitted, however, Holmes's allegations are still only minimally relevant. The allegations of abuse are one step removed from the material issues of Holmes's *mens rea* defense: (1) whether she experienced PTSD, anxiety, and depression at the time of the alleged offenses; and (2) whether these mental conditions affected her ability to form the requisite intent. The allegations are also far removed from the relevant time period: [REDACTED]

[REDACTED] Thus, these allegations have a tangential connection, at best, to Holmes's claims that her experience of PTSD in 2013–2016 undermined her *mens rea*.

Testimony about the causes of her mental condition—[REDACTED] and IPV—may be minimally relevant to evaluating Dr. Mechanic's diagnoses, but this minimal relevance is far outweighed by their potential prejudice and their likelihood to confuse and distract the jury from the material issues of the case. *See* Fed. R. Evid. 403; *Cruz-Ramirez*, 2011 WL 2446278, at \*6. It is also possible that particular allegations, [REDACTED] are *not* relevant to the diagnoses. The Court would only be able to determine these relevancy questions by conducting a *Daubert* hearing, and hearing from both the defense and government experts.

## E. To The Extent There Are Facts and Evidence in Dispute, the Government Requests the Court Set a *Daubert* Hearing

If the Court still has questions about Dr. Mechanic's potential testimony and its admissibility, the government urges the Court to hold a *Daubert* hearing before granting severance motion. On this

record, there is a manifest need for the Court to determine the bases and reasons for Dr. Mechanic's opinion and to decide whether these opinions have a sufficient basis in analytical methodologies before making a final—and likely irreversible—decision on severance. At the very least, the case law, evidence, and arguments set forth above raise serious questions about the viability of this defense—questions which could be resolved as part of a *Daubert* hearing.

### III. Even Assuming the Rule 12.2(b) Defense Is Admissible, Defendants Have Failed To Demonstrate That Their Defenses are Irreconcilably Antagonistic

Even if Holmes's Rule 12.2(b) defense were viable in some form—which it is not at this juncture—severance would still be unnecessary in this case because Balwani has not articulated how this defense is irreconcilably antagonistic to his own. “To warrant severance on the basis of antagonistic defenses, codefendants must show that their defenses are irreconcilable and mutually exclusive.” *United States v. Angwin*, 271 F.3d 786, 795 (9th Cir. 2001). Defenses are mutually exclusive when “acquittal of one codefendant would *necessarily* call for the conviction of the other.” *United States v. Tootick*, 952 F.2d 1078, 1081 (9th Cir. 1991) (emphasis added); *Throckmorton*, 87 F.3d at 1072 (noting that “a defendant must show that the core of the codefendant's defense is so irreconcilable with the core of his own defense that the acceptance of the codefendant's theory by the jury precludes acquittal of the defendant”). Even when defendants present antagonistic defenses, such defenses “are not prejudicial *per se*.” *Zafiro*, 506 U.S. at 538.

Holmes's defense does *not* require a jury to find Balwani guilty. Instead, her defense focuses entirely on whether she was capable of forming the requisite *mens rea* to commit the offense. Her allegations against Balwani, though unflattering to him, have no connection to the fraud and no connection to his relative guilt or innocence. In other words, Defendants can still both argue their innocence, and the jury may believe both of them and return acquittals for both. *See, e.g., United States v. Shields*, 673 F. App'x 625, 626–27 (9th Cir. 2016) (“Defendants' defenses were not mutually exclusive because they both argued that they were innocent, and the jury could have believed that both were acting in good faith, and acquitted them both.”). For example, both Defendants may argue that there was no scheme to defraud and the statements made to investors and patients were entirely truthful. And both Defendants may argue any false or deceptive statements were immaterial.

1 Additionally, Balwani has not yet articulated his defense and how this defense would be  
 2 antagonistic to Holmes's. The burden rests with Defendants to show that their defenses are  
 3 irreconcilably antagonistic. *Throckmorton*, 87 F.3d at 1072. Since they have not yet made this showing,  
 4 severance would be premature. See, e.g., *United States v. Son Van Nguyen*, No. CR. S-99-0433 WBS,  
 5 2002 WL 32103063, at \*1 (E.D. Cal. Nov. 7, 2002) (holding severance based on a theory of mutually  
 6 antagonistic defenses was premature where both of defendants' defenses had not yet been disclosed).

7 Because it is not clear that Balwani's defense would be antagonistic to Holmes's, this case is  
 8 distinguishable from *United States v. Breinig*, 70 F.3d 850 (6th Cir. 1995). (See Balwani Mot. to Sever  
 9 at 4-5; Balwani Supp. Memo. at 4.) There, Breinig claimed that "because [his wife and co-defendant]  
 10 kept all the books and an accounting firm prepared their taxes, he had no knowledge of the  
 11 underreporting." *Id.* at 852. In other words, Breinig presented a defense in which he pointed the finger  
 12 at his co-defendant wife and his innocence rested on her guilt. Thus, in *Breinig*, unlike here, the  
 13 defendants had met their initial burden of showing actually antagonistic defenses.<sup>7</sup>

14 Moreover, even if some form of the *mens rea* defense were admitted, it does not necessarily  
 15 follow that all allegations against Balwani—[REDACTED]—would also be  
 16 admitted. The point of Holmes's defense is not duress, i.e., Balwani's abuse forced her to commit fraud.  
 17 The point of her defense is that she suffered from mental conditions that undermined her ability to form  
 18 the intent to deceive. As discussed above, the causes of those mental conditions have relatively limited  
 19 relevance to the ultimate issues that the jury must decide: whether she suffered from the mental  
 20 conditions at the time of the alleged fraud and whether these conditions undermined her *mens rea*.  
 21 Balanced against the minimal relevance of these allegations is the high likelihood that they would  
 22 mislead, confuse, and distract the jury. Thus, even if the Court admitted testimony from Dr. Mechanic  
 23

24 <sup>7</sup> Of course, there, the Sixth Circuit reversed not merely because the defenses were antagonistic,  
 25 but because the testimony of Breinig's wife that he was an "adulterous, mentally abusive, and  
 26 manipulating spouse" was so prejudicial that it denied Breinig the right to a fair trial. *Id.* at 852-53.  
 27 The court in *Breinig*, though, did not examine the content of the expert testimony in support of the  
 28 wife's defense and therefore never considered how these facts were relevant and admissible as part of  
 her defense. In fact, it appears from the district court docket that the court did not conduct a *Daubert*  
 hearing. See *United States v. Breinig*, 2:93-CR-80404 (E.D. Mich. 1993). Thus, the case is of limited  
 value in evaluating the threshold matters here: (1) whether Holmes's Rule 12.2(b) defense is viable; and  
 (2) if so, whether certain allegations would be admissible as part of the defense.

about Holmes's mental condition, the Rule 403 balancing test would still weigh heavily against admission of the "uniquely incendiary" allegations that Balwani describes.

And even if some limited testimony about the general nature of these allegations were admitted, a limiting instruction could cure any potential prejudice. *See, e.g., Reay v. Scribner*, 369 F. App'x 847, 848–49 (9th Cir. 2010) (holding that denial of defendant's severance motion from his wife and codefendant did not violate his due process rights where wife testified about defendant's domestic violence because, among other reasons, any prejudice was lessened by the trial court's instructions to the jury that it was to use the domestic violence evidence for proper purposes). *See also Fernandez*, 388 F.3d at 1241 ("[A] district court's careful and frequent limiting instructions to the jury, explaining how and against whom certain evidence may be considered, can reduce or eliminate any possibility of prejudice arising from a joint trial."); *United States v. Joetzki*, 952 F.2d 1090, 1094 (9th Cir. 1991) ("A defendant seeking severance based on the 'spillover' effect of evidence admitted against a co-defendant must also demonstrate the insufficiency of limiting instructions given by the judge.").

Because Holmes's Rule 12.2(b) defense is not irreconcilably antagonistic with Balwani's potential defenses, and would not necessarily result in highly prejudicial allegations being admitted at a joint trial, severance is unnecessary.

#### IV. "Expensive Pretrial Investigation" Is Not a Basis for Severance

Severance remedies potential prejudice *at trial*. "[W]hen defendants properly have been joined under Rule 8(b), a district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafrio*, 506 U.S. at 539. Nothing in Rule 14 contemplates severance as a remedy for a co-defendant's "expensive" pretrial investigation. Nor has Balwani cited any authority supporting such a premature application of severance.<sup>8</sup>

<sup>8</sup> To the contrary, courts do not decide motions to sever until the record contains *all* relevant facts necessary to decide the issue. *See, e.g., United States v. Shayota*, No. 15-CR-00264-LHK, 2016 WL 2730230, at \*3 (N.D. Cal. May 10, 2016) (motion for severance premature before government provided co-defendant statements it sought to admit); *United States v. Piper*, No. CR 08-82 RSL, 2008 WL 2230747, at \*3–4 (W.D. Wash. May 29, 2008) (denying as premature motion to sever based in part on the "possibility" of mutually exclusive and antagonistic defenses). This is because severance is a remedy that imposes significant burdens on the court and the government. *Zafrio*, 506 U.S. at 540.



1 **V. The Court Can Ensure a Fair Trial for Balwani by Empaneling Dual Juries**

2 At the January 13, 2020, hearing, the Court expressed concern with delaying a decision on  
3 severance. The government recognizes this case presents unique scheduling difficulties. However, the  
4 Court need not sever the trial at this juncture. Another form of protection—empaneling dual juries—  
5 would ensure that a joint trial would not deny Balwani his right to a fair trial, even assuming all of the  
6 allegations were admitted during testimony from Dr. Mechanic and Holmes.

7 The procedures for empaneling dual juries are straightforward: the Court would seat a “Holmes  
8 Jury” and a “Balwani Jury.” The juries would both be present for the government’s opening statement,  
9 but only the “Holmes Jury” would be present for her opening statement, and only the “Balwani Jury”  
10 would be present for his. Similarly, only the “Holmes Jury” would be present for her affirmative  
11 defense, and for any government rebuttal case addressing her defense. During closing arguments, only  
12 the “Holmes Jury” would be present for her closing statement and for the government’s rebuttal  
13 argument in response, and likewise for Balwani’s closing statement. Although this would require some  
14 additional resources from the public and the Court, it would be much less resource-intensive than  
15 conducting two lengthy trials. It would also allow two properly joined co-conspirators to be tried  
16 together, which is what the rules and the case law support. Finally, this procedure would prevent the  
17 “Balwani Jury” from hearing any of the “uniquely incendiary” allegations of abuse that he claims could  
18 prejudice him and deny him a fair trial.

19 Defendants may argue that Holmes could still cross-examine government witnesses concerning  
20 her allegations of abuse. But simply asking questions about Balwani’s behavior towards Holmes would  
21 not create such prejudice that Balwani would be denied a fair trial. Moreover, defense counsel would be  
22 required to have some foundation for asking government witnesses about allegations of abuse. The  
23 government is aware of *no* government witness who has knowledge of the allegations that Balwani  
24 sexually and physically abused Holmes. Thus, whatever testimony might be elicited on cross-  
25 examination would not prejudice Balwani to the point that he would be unable to receive a fair trial.

26 The use of dual juries is widely accepted in the Ninth Circuit. *Lambright*, 191 F.3d at 1185  
27 (“[D]ual juries are in wide use and . . . they have worked out just fine.”); *Beam v. Paskett*, 3 F.3d 1301,  
28 1304 (9th Cir. 1993); *United States v. Burnette*, 698 F.2d 1038, 1042 n.2 (9th Cir. 1983); *United States*

1 v. *Sidman*, 470 F.2d 1158, 1167–70 (9th Cir. 1972). In *Sidman*, for instance, the Ninth Circuit approved  
 2 the use of dual juries and articulated how the district court properly conducted the trial efficiently and  
 3 successfully protected each defendants’ due process and trial rights. 470 F.2d at 1167–68. There, the  
 4 district court explained the purpose of two juries where each jury would decide the guilt or innocence of  
 5 only one defendant, instructed each juror not to talk to each other about the case, and named one jury the  
 6 “Clifford jury” and the other the “Sidman jury.” One jury sat in the jury box and the other sat in chairs  
 7 in front of the jury box. Counsel and the defendant would be present whenever testimony or evidence  
 8 was presented in their respective case. The first verdict returned was not announced until the second one  
 9 was returned. The Ninth Circuit held that the dual juries used did not violate either of the defendants’  
 10 trial and due process rights.<sup>9</sup>

11 Here, the government anticipates that all of the evidence in its case-in-chief will be admissible  
 12 against both Defendants. Given that the Defendants are properly joined, using a dual-jury procedure  
 13 would not unduly complicate the trial process, and more importantly, would not result in any specific  
 14 and undue prejudice to either defendant. Severance is an extraordinary remedy for a potential defense  
 15 that may not even be admitted. In this case, empaneling dual juries would provide a much less  
 16 disruptive and ultimately more just outcome than severance.

# 17 **VI. Balwani Has Failed to Demonstrate Prejudice and Should Not Proceed to Trial First**

18 Separate from the Court’s decision on severance is Balwani’s demand to proceed to trial first.  
 19 However, he has not established that he would be unable to receive a fair trial in this district should  
 20 Holmes be tried first, nor has he identified the proper remedy. The Court should deny this request.

21 Balwani has no right to have the trials conducted in a particular order. See *Mack v. Peters*, 80  
 22 F.3d 230, 235 (7th Cir. 1996) (“Severance . . . does not create a right to a particular trial sequence.”).  
 23 “[C]o-conspirators should not be allowed to control the order in which they are tried.” *United States v.*  
 24 *Broussard*, 80 F.3d 1025, 1038 (5th Cir. 1996). Rather, it is this Court’s “prerogative to decide the order  
 25 in which defendants will be tried.” *Id.*

26  
 27 <sup>9</sup> In *Sidman*, the Ninth Circuit expressed some concern that the district court’s local rules did not  
 28 describe specific guidelines for dual juries, but *Sidman* was decided in 1972 when the practice was  
 relatively novel. 470 F.2d at 1170. By 1999, in its en banc decision in *Lambright*, the Ninth Circuit  
 stated that “dual juries are in wide use and . . . they have worked out just fine.” 191 F.3d at 1185.



1 “The remedy for excessive pre-trial publicity is a motion for change of venue and voir dire of  
 2 prospective jurors. Severance . . . is not a remedy to combat unfavorable pre-trial publicity . . . .”  
 3 *United States v. Thevis*, 474 F. Supp. 117, 132 (N.D. Ga. 1979) (footnote omitted); *see also United*  
 4 *States v. Noriega*, 746 F. Supp. 1548, 1556 (S.D. Fla. 1990) (rejecting pretrial publicity as a basis for  
 5 severance and stating “[i]f . . . careful voir dire is not enough to limit the prejudice flowing from pretrial  
 6 publicity, then the answer lies in locating a venue in which all the defendants receive a fair trial”).

7 Just as pretrial publicity is not a basis for severance, it is not a basis to order the trials. Even if it  
 8 were, Balwani’s claim that Holmes’s defense will incurably taint the jury pool (and thus he must go  
 9 first) is speculation. The sole evidentiary support for this claim is his counsel’s count of 150 stories  
 10 since October 2015, when John Carreyrou’s article first ran in *The Wall Street Journal*, additional  
 11 national media attention, and unsworn, unverified news articles about #MeToo.

12 The Ninth Circuit, however, has “made clear that ‘pervasive publicity, without more, does not  
 13 automatically result in an unfair trial.’” *United States v. Guerrero*, 693 F.3d 990, 1002 (9th Cir. 2012)  
 14 (quoting *Seattle Times Co. v. U.S. Dist. Court*, 845 F.2d 1513, 1517 (9th Cir. 1988)); *see also In re*  
 15 *Tsarnaev*, 780 F.3d 14, 15 (1st Cir. 2015) (“[A]ny high-profile case will receive significant media  
 16 attention. . . . Knowledge, however, does not equate to disqualifying prejudice.”). Balwani does nothing  
 17 to demonstrate the nature of the coverage. *Cf. Guerrero*, 693 F.3d at 1002 (“In assessing prejudicial  
 18 effect, we look to the publicity’s capacity to inflame and prejudice the entire community.” (quotations  
 19 omitted)). He does not show the extent to which potential venire members noted the news coverage,  
 20 recall it today, and have developed negative views about Theranos, Holmes, or himself. He presents no  
 21 polling data or expert testimony. *Cf. Skilling v. United States*, 561 U.S. 358, 369-370 (2010) (affirming  
 22 denial of change of venue in Enron criminal case despite “affidavits from . . . experts [Skilling] engaged  
 23 portraying community attitudes in Houston”). He overlooks the fact that San Jose is “a large, diverse  
 24 metropolitan area” whose “residents obtain their news from a vast array of sources.” *Tsarnaev*, 780  
 25 F.3d at 21; *see also Skilling*, 561 U.S. at 382 (noting Houston’s large, diverse pool of potential jurors);  
 26 <https://www.justice.gov/usao-ndca> (noting more than 9 million people reside in Northern District of  
 27 California). He gives no evidence—beyond unsworn news articles and citation to an unsworn social  
 28 science article—to support the claim that traditional tools like voir dire and, if necessary, change of

venue will protect against the prejudice he simply assumes. *See Skilling*, 561 U.S. at 395 (noting the district court's "face-to-face opportunity to gauge demeanor and credibility, coupled with information from the questionnaires regarding jurors' backgrounds, opinions, and sources of news, gave the court a sturdy foundation to assess fitness for jury service"). In sum, "it would be premature and speculative to conclude at this point, without the benefit of a voir dire examination of prospective jurors, that the publicity surrounding [the defendant] is so prejudicial and widespread that a fair and impartial jury cannot be seated in this case." *Noriega*, 746 F. Supp. at 1556. Balwani's evidence falls far short of showing that current publicity, or any that would result from disclosure of Holmes's defense, will incurably taint the jury pool.<sup>10</sup>

If the Court elects to sever the case, Holmes must be tried first. Holmes, quite literally, was the face of Theranos. She was its only CEO, she chaired its board, and she held the greatest equity stake in the company. Her persona, not Balwani's, generated interest from investors, partners, and the media. Delaying her trial for an indefinite time after Balwani's will unjustly frustrate the victim's and the public's interest in adjudicating the allegations of the indictment against the most responsible party.

### CONCLUSION

For these reasons, the Court should deny severance. If severance is granted, Holmes should be tried first.

DATED: January 31, 2020

Respectfully submitted,

ADAM A. REEVES  
Attorney for the United States,  
Acting Under Authority Conferred  
By 28 U.S.C. § 515



JEFF SCHENK  
JOHN C. BOSTIC  
ROBERT S. LEACH  
VANESSA BAEHR-JONES  
Assistant United States Attorneys

<sup>10</sup> For the reasons previously stated, the Court should unseal the filings relating to the Rule 12.2(b) defense and the motions to sever, or at a minimum require Defendants to file redacted versions that redact only matters [REDACTED]

[REDACTED] Approximately 125 of the 312 filings in this case (40%) are now sealed. The victims and the public have a right to know what is happening in this proceeding and why.  
GOV. OPP. TO BALWANI MOT. TO SEVER

Declaration of Renée Binder, M.D.

I, Renée Binder, declare and state as follows:

1. I am a physician who has been licensed to practice in the State of California since 1974. I am board certified in General Psychiatry since 1978 and in the subspecialty of Forensic Psychiatry since 1994. I have treated thousands of patients with depression, anxiety, posttraumatic stress disorder, and women who have suffered from interpersonal abuse and interpersonal violence.
2. I have done forensic evaluations since 1980. I have served as President of the American Academy of Psychiatry and the Law as well as President of the American Psychiatric Association and served as interim Chair of the Department of Psychiatry and the Director of the Langley Porter Psychiatric Hospital and Clinics at the University of California San Francisco School of Medicine from 2008 to 2011. A copy of my C.V. is attached.
3. I was asked to review the declaration of Mindy Mechanic, PhD, as well as the documents given to me by the Office of the U.S. Attorney, as detailed in Appendix A. [REDACTED]  
[REDACTED] as well as medical records from the University of Southern California Keck Hospital.

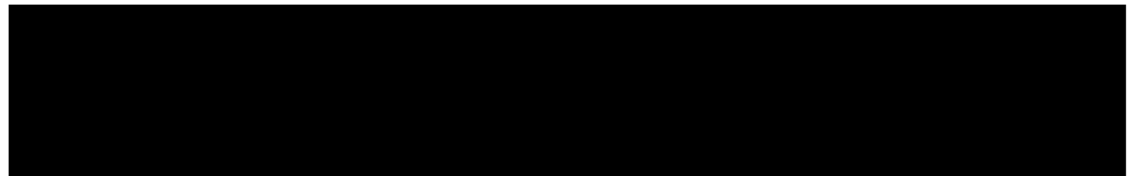
**Dr. Mechanic's Report**

4. [REDACTED]

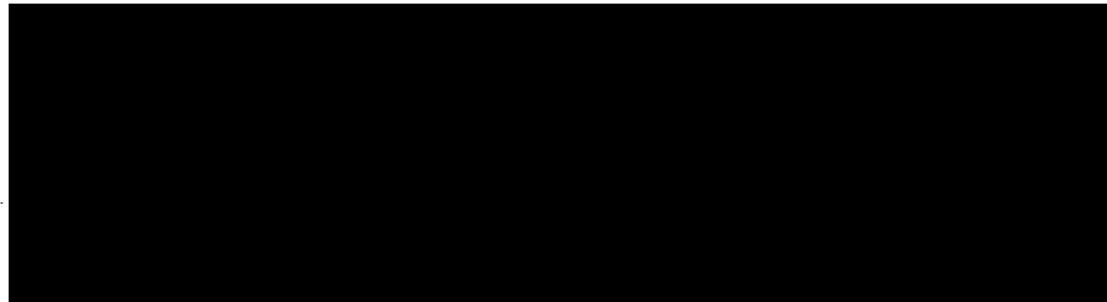
5. [REDACTED]



6.



7.



**Interpersonal Abuse and Interpersonal Violence Definitions**

8. Interpersonal abuse refers to abusive relationships in which the abuse is physical, psychological, and/or sexually coercive and may include stalking. In such abusive relationships, the aggressor uses manipulative tactics and tries to exert control over the other person. Resistance or challenge can be met with an escalation of abuse. Attempts to

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<sup>1</sup> In describing the text or chat communications, I describe the defendants using their first names.

leave are met with threats and intimidation. As stated in Dr. Mechanic's report, interpersonal abuse is fundamentally about control (page 8 of Dr. Mechanic's report).

[REDACTED]

9.

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

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[REDACTED]

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12. [REDACTED]

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- [REDACTED]

- [REDACTED]

- [REDACTED]

13. [REDACTED]

**Posttraumatic Stress Disorder Diagnosis**

14. Posttraumatic Stress Disorder can occur after exposure to actual or threatened death, serious injury, [REDACTED] Symptoms include intrusion symptoms such as recurring, involuntary and intrusive distressing memories of the event, recurrent nightmares, intense or prolonged psychological distress and/or marked physiological



reactions to reminders of the trauma. Symptoms also include avoidance symptoms where a person avoids memories and external reminders of the trauma. In addition, there can be the inability to remember aspects of the traumatic event not related to having been intoxicated with alcohol [REDACTED]

[REDACTED] negative cognitions about oneself, feelings of detachment from others and persistent inability to experience positive emotions. Other symptoms include feelings of arousal such as irritable behavior, hypervigilance and exaggerated startle responses. In order to make the diagnosis, there needs to be clinically significant distress or impairment in social, occupational, or other important areas of functioning. (DSM-5, 2013, pages 271–72.)

15. Although trauma is relatively ubiquitous, the projected lifetime risk for PTSD is 8.7%. The 12 month prevalence among US adults is 3.5%. That is, most people who suffer from trauma do not develop PTSD. In addition, there is a phenomenon of False PTSD, especially in the context of criminal evaluations when defendants may malingering their symptoms and there is also the phenomenon of misattributing symptoms due to other causes as PTSD. (Matto, McNiel, Binder, “A Systematic Approach to the Detection of False PTSD,” Journal of American Academy of Psychiatry and the Law. August 2019.)

[REDACTED]

16. [REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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20. [REDACTED]

21. [REDACTED]

22. [REDACTED]

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33. My opinions are based on my education, training, experience, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] I reserve the right to modify my  
opinions if I am given additional records and the opportunity to interview Ms. Holmes  
and other relevant individuals.

I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

Dated: 1/31/20

Renee Binder M.D.

Renee Binder, M.D.

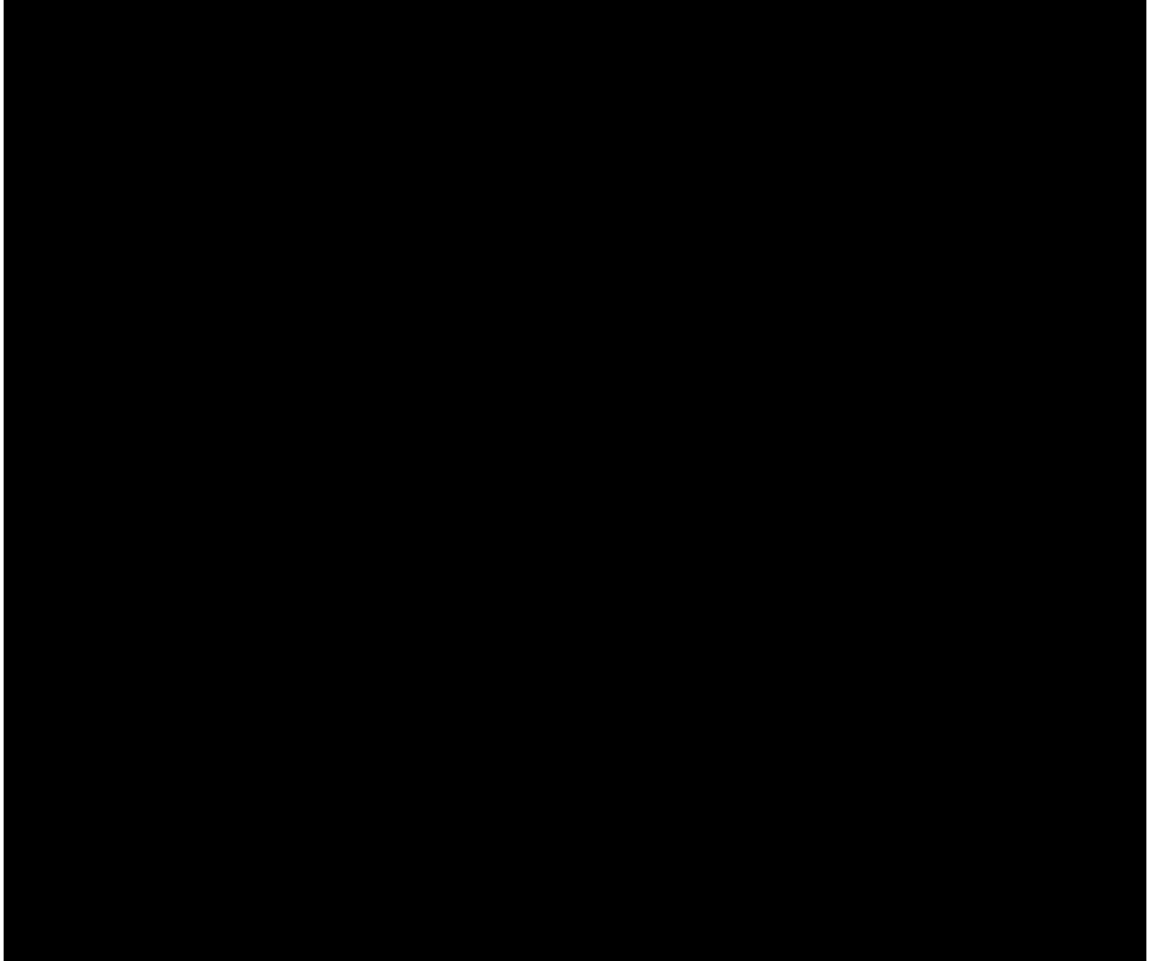
Professor of Psychiatry

University of California, San Francisco

Appendix A

I was provided with the following materials by government counsel:

1.



2. The following case filings and related materials: (1) the December 16, 2019, Fed. R. Crim. P. 12.2(b) Disclosure; (2) the December 16, 2019, Motion for Severance, filed by Defendant Holmes; (3) [REDACTED] (4) the January 17, 2020, Letter regarding Rule 12.2(b) Request; (5) [REDACTED] (6) the December 5, 2019, Declaration of Dr. Mindy Mechanic; (7) Defendant Balwani's Motion to Sever; (8) the Declaration of Jeffrey Coopersmith in support of Motion to Sever; (9) Defendant Balwani's Supplemental Memorandum in support of Motion to Sever; and (10) the Declaration of Jeffrey Coopersmith in support of the Supplemental Memorandum.

**Prepared:**  
**1/15/20**

**University of California, San Francisco**

**CURRICULUM VITAE**

**Name:** **Renée L. Binder, M.D.**

**Current Title:** Distinguished Professor

**Department:** Department of Psychiatry, School of Medicine  
University of California, San Francisco

**Current Positions:** Director, Psychiatry and the Law Program (as of 2/99)  
Associate Dean in the Office of Academic Affairs, School of Medicine (as of 10/04)  
President, American Psychiatric Association (May 2015-May 2016)

**Prior Positions (2008-11):** Interim Chair of Department of Psychiatry  
Director of Langley Porter Psychiatric Hospital and Clinics

**Address:** 401 Parnassus Avenue, San Francisco, CA 94143-0984

**Phone:** (415) 476-7304

**Fax:** (415) 502-2206

**E-mail:** Renee.Binder@ucsf.edu

**EDUCATION:**

<b>Dates</b>	<b>Institution Attended &amp; Location</b>	<b>Degree or Status</b>	<b>Major Subjects</b>
1965-69	Barnard College, New York, NY	1969, B.A., cum laude	Art History & Pre-Medicine
1969-73	University of California, San Francisco School of Medicine	1973, M.D.	Medicine
1973-76	Mt. Zion Hospital & Medical Center, San Francisco	Intern & Resident	Psychiatry
2010	Harvard School of Public Health	Program for Chiefs of Clinical Services	Health Policy and Management
2018	Stanford Graduate School of Business	Innovative Health Care	Leadership Program

**LICENSES, CERTIFICATIONS:**

1974	Medical license, California G27505
1978	Certified, American Board of Psychiatry & Neurology —Specialty of Psychiatry
1993	Certified, Administrative Psychiatry

**CURRICULUM VITAE Renée Binder, M.D.****Page 2**

1994- 2004	Certified, American Board of Psychiatry & Neurology—Subspecialty of Forensic Psychiatry
2004-2014	Recertified, American Board of Psychiatry & Neurology—Subspecialty of Forensic Psychiatry
2013-2023	Recertified, American Board of Psychiatry & Neurology—Subspecialty of Forensic Psychiatry

**PRINCIPAL POSITIONS HELD:**

1976-77	UCSF	Clinical Instructor
1977-85	UCSF	Assistant Professor of Psychiatry
1985-91	UCSF	Associate Professor of Psychiatry
1991-now	UCSF	Professor of Psychiatry

**OTHER POSITIONS HELD CONCURRENTLY:**

1974-77	Menlo Park Veterans Hospital	Physician O.D.
1976-86	Langley Porter Psychiatric Institute	Director, Emergency Services
1978-80	Langley Porter Psychiatric Institute	Director, Rape Treatment Center
1976-77	Langley Porter Psychiatric Institute	Staff Psychiatrist, Crisis Intervention Unit
1977-99	Langley Porter Psychiatric Institute	Director, Adult Inpatient Service
1976-now	Langley Porter Psychiatric Institute	Attending Physician, Medical Staff

**HONORS, AWARDS, AND FELLOWSHIPS:**

1974-76	American Psychiatric Association Falk Fellowship. One of twenty residents selected throughout this country to become involved with the APA on a national level
1984	Women of Achievement Award by the Soroptomist International of the Americas given in recognition by peers of "outstanding abilities, talents and contributions to the profession"
1986	Interdisciplinary Achievement Award from the Langley Porter Psychiatric Institute Alumni-Faculty Association. Awarded for significant contribution to interdisciplinary work and understanding in the field of mental health
1986	World Health Organization Travel-Study Fellowship to Japan. Awarded to individuals "who show the greatest promise of benefiting health programs in the United States."
1990	Visiting Research Fellow, National Hospital for Nervous Diseases, Queen Square, London, UK: June-August, 1990
1998	Northern California Psychiatric Society "President's Distinguished Service Award" for "skill in building consensus in a diverse organization and for efficient and responsible leadership style"
2003	American Psychiatric Association Congressional Health Policy Fellowship to work in the U.S. Senate and consult on health policy.
2004	California Psychiatric Association Award for Contributions and Service
2005	Distinguished Service on the Center for Judicial Education and Research Faculty presented by the Administrative Office of the Courts
2006	Dr. J. Elliott Royer Award for academic excellence and significant contributions to the field of academic psychiatry

**CURRICULUM VITAE Renée Binder, M.D.****Page 3**

2006	Plenary Speaker at UCSF Dean's Office Symposium for Mid-Career Faculty
2006	Psychiatry Residents Association Award for "Excellence in Teaching"
2006	American Academy of Psychiatry and the Law's "Seymour J. Pollack Distinguished Achievement Award" in recognition of distinguished contributions to the teaching and educational functions of forensic psychiatry
2009	Keynote speaker: Conference on Violence sponsored by the SF Department of Public Health
2009	UCSF "Champion of Diversity" for commitment and efforts toward achieving diversity in the category of leadership
2010	Distinguished Life Fellow of the American Psychiatric Association
2014	Selected as one of the "Best Doctors in America" (first selected in 1996)
2014	American Academy of Psychiatry and the Law's "Golden AAPL Award" in recognition of significant contributions to the field of forensic psychiatry
2017	Visiting Professor, Yale University
2018	Isaac Ray Award for "Outstanding Contributions to Forensic Psychiatry or the Psychiatric Aspects of Jurisprudence"

**PROFESSIONAL ORGANIZATIONS:**Memberships:

1974-now	Northern California Psychiatric Society
1974-now	American Psychiatric Association
1985-now	American Academy of Psychiatry and the Law

Service To Professional Organizations:

1974-75	Northern California Psychiatric Society	Committee on Women
1974-75	American Psychiatric Association	Committee of Medical Education
1975-76	Northern California Psychiatric Society	Resident Councilor to Executive Committee
1975-76	Northern California Psychiatric Society	Nominating Committee
1996, 1999, 2000		
1978-79	Northern California Psychiatric Society	Medi-Cal Committee
1979-80	American Psychiatric Association	Task Force of Psychiatric Emergency Care Issues, Resource Person
1983-89	American Psychiatric Association	Committee on Women
1987-89	American Academy of Psychiatry and the Law	Public Information Committee
1988-90	American Academy of Psychiatry and the Law	Education Committee
1989-03	American Academy of Psychiatry and the Law	Journal Committee
1990-94	American Academy of Psychiatry and the Law	Fellowship Committee
1990-97	American Academy of Psychiatry and the Law	Program Committee
1994-97	American Academy of Psychiatry and the Law	Chair of Membership Committee
1991-92	American Academy of Psychiatry and the Law	Chair of Program Committee
1991-94	American Academy of Psychiatry and the Law	Councilor
1997-00	American Academy of Psychiatry and the Law	Nominating Committee
1989-90	Northern California Psychiatric Society	Fellowship Committee
1989-90	American Psychiatric Association	Committee on Confidentiality
1995	American Academy of Psychiatry and the Law	Ad Hoc Committee to Search for Medical Director
1990-95	American Psychiatric Association	Chair of Committee on Confidentiality
1995-00	American Psychiatric Association	Council on Psychiatry and the Law



**CURRICULUM VITAE Renée Binder, M.D.****Page 4**

1991-95	American Psychiatric Association	Practice Guidelines Work Group on Developing Guidelines for Psychiatric Evaluation of Adults
1989-93	American Psychiatric Association	Task Force on Clinician Safety
1989-90	Association for Women Psychiatrists	Treasurer
1989-now	Group for Advancement of Psychiatry	Committee on Psychiatry and the Law (Contributing status as of 4/92)
1994-95	American Academy of Psychiatry and the Law	Vice President
1995-96	Northern California Psychiatric Society	Vice President
1995-97	American Psychiatric Association	Chair of Subcommittee on Child Custody Issues
1996-97	California Psychiatric Association	Executive Council
1996-97	Northern California Psychiatric Society	President-Elect
1997-98	Northern California Psychiatric Society	President
1997-00	American Psychiatric Association	Chair of Council on Psychiatry and the Law
1997-98	American Academy of Psychiatry and the Law	President
1998-99	American Psychiatric Association	Task Force to Prepare APA Position Statement on Confidentiality
2000-04	American Psychiatric Association	Chair of Commission/Committee on Judicial Action
2000-03	American Psychiatric Association	Commission on Public Policy, Litigation and Advocacy
2000-02	California Psychiatric Association	President-elect
2001-14	American Academy of Psychiatry and the Law	Chair, Awards Committee
2004-06	American Academy of Psychiatry and the Law	President, Association of Directors of Forensic Psychiatry Fellowships
2002-04	California Psychiatric Association	President
2005-12	American Psychiatric Association	Isaac Ray Award Committee (Chair 2009-12)
2004-07	American Psychiatric Association	Trustee-at-large
2004-05	American Psychiatric Association	Work Group to revise 1995 <i>Practice Guideline for the Psychiatric Evaluation of Adults</i>
2005-	American Psychiatric Association	Task Force to Update the Ethics Annotations
2007-12	American Psychiatric Association	Committee on Advocacy and Litigation
2008-12	American Psychiatric Association	Task Force on the Assessment of Violence Risk
2011-now	American Psychiatric Association	Council on Psychiatry and the Law (corresponding member)
2012-13	American Psychiatric Association	Chair of Committee on Advocacy and Litigation Funding
2014-16	American Psychiatric Association	President-Elect and President
2014-15	American Psychiatric Association	Chair of Joint Reference Committee
2014-now	American Psychiatric Association	Member Committee on Judicial Action
2016-19	American Psychiatric Association	Member of Board of Trustees
2019-20	American Psychiatric Association	Work group on Financial Strategic Planning
2020-28	American Board of Psychiatry and Neurology	Forensic Psychiatry Article Assessment Continuing Certification Pilot

Other Professional Activities:

President, Association of Directors of Forensic Psychiatry Fellowship Programs, 2004-2006

American Board of Psychiatry and Neurology Committee on Recertification in Forensic Psychiatry: 2000-2008

American Board of Psychiatry and Neurology Forensic Psychiatry Subspecialty Steering Committee: 2001-2008

American Board of Psychiatry and Neurology: Examiner: 1979, 1981, 1982, 1983, 1984, 1985, 1988, 1992; Senior Examiner: 1999-2006

Keynote Speaker, "California Legislative Update", Central California Psychiatric Society Annual Meeting, March 15, 2003

Presidential Appointee to Committee on Added Qualifications in Forensic Psychiatry of the American Board of Psychiatry and Neurology: 1992-2001

Specialist Site Visitor in Forensic Psychiatry for Residency Review Committee of Accreditation Council for Graduate Medical Education: 1996-97

Organizer and Conference Director of "Workplace Violence: Assessment and Prevention (with participation of FBI): 1996

Organizer and invited speaker at "Faces of Forensics" conference in collaboration with University of California Hastings College of the Law: 2008

Organizer and participant in Congressional Briefings on increasing the number of psychiatric beds in the US and criminalization of persons with mental illness: 2015-2016

Invited Member of Technical Advisory Group of SAMHSA (Substance Abuse and Mental Health Services Administration) to evaluate Assisted Outpatient Programs in US with NIMH

Invitee to American Board of Psychiatry and Neurology Forum on Strategic Planning 2019

**SERVICE TO PROFESSIONAL PUBLICATIONS:**

1979-now	Psychiatric Services	Reviewer
1986-now	American Journal of Psychiatry	Reviewer
1986-now	Journal of American Medical Association	Reviewer
1986-90	Journal of Clinical Psychopharmacology	Reviewer
1986-90	Biological Psychiatry	Reviewer
1987-now	Journal of the American Academy of Psychiatry and the Law	Reviewer
1989-03	Journal of the American Academy of Psychiatry and the Law	Associate Editor

**INTERNATIONAL INVITED PAPERS AND LECTURES:**

1986 Lecturer on "Psychiatric Emergency Services in the United States" at Teikyo University Medical School in Tokyo, Japan. (Invited by Professor Hajime Kazamatsuri)

1986 Lecturer on "Treatment for Rape Victims" at the Institute of Public Health in Tokyo, Japan. (Invited by Dr. Haruo Kuwabara)

1990 Lecturer on "Post-Traumatic Stress Disorder" at the National Hospital for Nervous Diseases, Queen Square, London, U.K. (Invited by Dr. Michael Trimble)

1995 Discussant for Case Conference on "Depression, Suicide Attempts and Management of Memories of Childhood Sexual Abuse" at National University of Singapore, Faculty of Medicine, Department of Psychological Medicine, Singapore. (Invited by Professor Kua Ee Heok) July 21, 1995

1995 Lecture on "Managing Psychiatric Emergencies in an Acute Inpatient Psychiatric Unit" at University of Malaya, Department of Psychological Medicine, Kuala Lumpur, Malaysia. (Invited by Professor M.P. Deva) July 28, 1995

1995 Discussant for Case Conference on "The Difficult to Manage Patient" at Institute of Mental Health/Woodbridge Hospital, Singapore. (Invited by Professor Teo Seng Hock and Department of General Psychiatry, Dr. Chee Kuan Tsee) July 31, 1995

**CURRICULUM VITAE Renée Binder, M.D.****Page 6**

- 1995 Lecture on "Intensive Psychiatric Care Unit: The U.S. Experience" at Institute of Mental Health, Singapore. (Invited by Professor Teo Seng Hoek and Dr. Chang Yang How) July 31, 1995
- 1995 Discussant for Case Conference on "The Violent Patient" and Lecture on "Assessment of Violence Risk" at Institute of Mental Health/Woodbridge Hospital, Singapore. (Invited by Professor Teo Seng Hock and Department of Forensic Psychiatry, Dr. Ang Ah Ling) August 1, 1995
- 1995 Keynote Speaker on "Family Violence" and "Sexual Abuse" at Seminar on Family Violence and Sexual Abuse, Singapore (Invited by Dr. Wong Yip Chong and Professor Kua Ee Heok) August 6, 1995
- 2015 Keynote Speaker on "Mental Illness and Violence" at Royal College of Psychiatrists, Birmingham, England June 29, 2015

**NATIONAL:**American Psychiatric Association Annual Meetings:

- 1979 Paper: "Setting up a Rape Treatment Center"
- 1985 Paper: "Sex Between Psychiatric Inpatients"
- 1986 New Research: "Evaluation of a Sexual Abuse Prevention Program"
- 1987 Paper: "Tardive Dyskinesia and Parkinsonism in Japan"
- 1989 Workshop: "Assaults Against Clinicians"
- 1990 Paper: "Violence and Decompensating Schizophrenic Patients" and Workshop: "Managing Dangerous Patients"
- 1991 New Research: "Cause of Psychological Symptoms After Lawsuits," Course: "Acute Management of Violent Patients," and Workshop: "Managing Aggressive Patients"
- 1992 Chair of Workshop: "Disclosure of Information about Famous Patients," and Workshop: "Managing the Aggressive Patient"
- 1993 Papers: "Resilience in Survivors of Childhood Sexual Abuse," and "Correlates of Accuracy in Assessing Violence Risk," New Research: "Impact of Banning Smoking on a Locked Unit"
- 1994 Chair and Organizer of Workshop: "Preserving Confidentiality"
- 1995 Workshop: "Psychiatrists' Role in Sexual Harassment" and Chair and Organizer of Workshop: "Confidentiality and Managed Care: Coping Strategies for Psychiatrists"
- 1996 Course on Sexual Harassment, and Chair and Organizer of Workshop: "Controversies in Child Custody"
- 1997 Discussant for Symposium: "Delayed Traumatic Recall in Psychiatry and the Law", Course on Sexual Harassment, Chair and Organizer of Symposium: "Child Custody – What We Do and Don't Know"
- 1998 Course on Sexual Harassment. Chair and Organizer of Workshop: "Fighting Managed Care: ERISA Limitations, Paper in Symposium on Violence: "Pharmacologic Approaches to Violence"
- 1999 Course on Sexual Harassment-Legal Issues, Chair and Organizer of Workshop: Legal Update "Managed Care, Confidentiality, and Sex Offenders", Paper on "Violence Risk Management"
- 2000 Course on Sexual Harassment-Legal Issues, Chair and Organizer of Workshop: "Mandatory Outpatient Treatment", Paper in Symposium on Emergency Psychiatry: "Involuntary Treatment", Presentation on "Malpractice"
- 2001 Paper in Symposium on Chemical Restraints: "Legal Trends and Civil Liberties in Forced Medications", Presenter in Workshop: "Prediction of Dangerousness", Course on "Sexual Harassment—Legal Issues"
- 2002 Chair and Organizer of Workshop: "Educating the Courts: Recent APA Amicus Curiae Briefs" and Course on "Sexual Harassment – Legal Issues"
- 2003 Workshop: "What is the Ethical Stance? Issues Related to World Psychiatry and Courts", Course on "Sexual Harassment", Discussant for Symposium: "Gay and Lesbian Parenting"

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- 2004 Chair and Organizer of Workshop: "What's New in Psychiatry and the Law at the APA"
- 2006 Discussant for Symposium, "Same Sex Civil Marriage: Historical and Mental Health Research Perspectives"
- 2007 Presenter at Workshop: "Psychiatric Expert Testimony: Increased Scrutiny, Increased Liability", Presenter at noon forum: "Violence and Mental Illness"
- 2009 Invited presentation for Forum: "Developing the next generation of clinical translational researchers: Innovations in an academic department of psychiatry"
- 2009 Organizer and Co-Chair: "Public Symposium on Mental Illness"- to raise public awareness about mental illness
- 2009 Presenter at Workshop: "Violence Risk Assessment in Acute Settings"

American Academy of Psychiatry and the Law Annual Meetings:

- 1984 Paper: "Patients' Rights Advocates in San Francisco"
- 1985 Paper: "Victims and Families of Violent Psychiatric Patients"
- 1986 Paper: "AIDS Antibody Tests on Inpatient Psychiatric Units"
- 1987 Paper: "Effects of Diagnosis and Context on Dangerousness"
- 1988 Papers: "The Relationship of Gender to Violence by Acute Psychiatric Patients" and "Violence in Geriatric Patients with Dementia"
- 1989 Paper: "Situational Influences on Symptoms Associated with Violence"
- 1990 Paper: "Women Clinicians and Patient Assaults"
- 1991 Papers: "The Impact of the Riese Decision on an Inpatient Unit", "Is Money a Cure: Follow-Up of Litigants in England", and Workshop: "Ethical Dilemmas in Forensic Practice"
- 1992 Paper: "Sexual Harassment: Issues for Forensic Psychiatrists"
- 1993 Papers: "Patterns of Recall of Childhood Sexual Abuse as Described by Adult Survivors", "Staff Gender and Risk of Assault on Doctors and Nurses", Workshops: "Perspectives on Sexual Harassment" and "Women in Forensic Psychiatry"
- 1994 Videotape Workshop: "Preserving Confidentiality", and Panel: "Violence Risk Assessment"
- 1995 Paper: "Impact of Hospitalization on Suicide Risk" and Panel: "Practical Evaluation of Competence to Consent"
- 1996 Paper: "Impact of Tarasoff Decision on Therapy and Victim", Workshop: "Violence Risk Assessment: The MacArthur Study"
- 1998 Presidential Address: "Are the Mentally Ill Violent?", Workshop: "Publishing in Forensic Psychiatry"
- 1999 Panel Presentation: "Psychiatry and the Law Issues at the American Psychiatric Association: An Update"
- 2000 Panel Presentation: "Gender Issues in the Practice of Forensic Psychiatry"
- 2001 Paper: "Threatening and Harassing Behavior by Psychiatric Patients toward Clinicians"
- 2002 Panel presentations: "Current Psychiatry and the Law Issues at the American Psychiatric Association", "Liability for the Forensic Psychiatrist"
- 2003 Panel presentations: "Choosing a Mentor", "Psychiatry and the Law in Organized Psychiatry"
- 2004 Panel presentation: "Sexual Harassment Evaluations in Employment Cases"
- 2006 Paper: "He Said-She Said": The Role of the Forensic Evaluation in Determining Credibility and Damages
- 2006 Mock Trial Organizer & Participant: "Medical Malpractice—Postpartum Psychosis and Suicide"
- 2007 Debate participant: Should mentally ill individuals who have been civilly committed be allowed to purchase guns?; Panel presentations: "Ethics for the forensic psychiatrist;" "Organizing, accrediting, and funding forensic fellowships"
- 2009 Papers: Covert Emergency Medications: Are They Ever Ethically Permissible?; The Role of Mental Health Professionals in Political Asylum Processing
- 2010 Papers: Zolpidem and the Courts; Fire Setting, Arson, Pyromania, and the Forensic Mental Health Expert

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- 2011 Papers: Postpartum Psychosis and the Courts; PTSD as a Criminal Defense; A/V Session: Assessment of Causation and Damages Years after Sexual Abuse
- 2012 Papers: Transgendered and Incarcerated: A Review of the Literature, Current Policies and Laws, and Ethical Issues; Cyberstalking and Cyberharassment; Panel Presentation: Problem-Solving Courts

American Psychiatric Association Conference on Women's Studies in Psychiatric Education: 1983 (Presentation on Rape)

American Medical Women's Association. Annual Meeting: 1985 (Paper, "The Management of Rape Victims by the Primary Care Physician")

American Orthopsychiatric Association: Annual Meeting: 1988 (Discussant for panel on "The Dangerousness Standard for Commitment")

American Association of Medical Colleges: Faculty Affairs Meeting: 2009 (Co-author for poster, "UCSF Travel Awards—Faculty with Child, Elder, Dependent Care Needs")

**REGIONAL:**California Psychiatric Association Annual Meeting:

- 1994 Course, "Perspectives on Recovered Sexual Abuse Memories Through Therapy"
- 1999 Course, "Malpractice Issues"
- 1999 Presentation at Workshop, "Involuntary Commitment (LPS) Laws: Should They Be Reformed?"
- 2003 Panel on "New Liabilities related to Tarasoff Warnings"

Northern California Psychiatric Society Annual Meeting:

- 1983 Presentation, "The Medical Workup of Dementia" as part of a panel on Geriatric Psychiatry
- 1989 Presentation, "Clozapine: A New Neuroleptic"
- 1996 Presentation, "The Assaultive Patient and Tarasoff" as part of a panel on Medico-Legal Issues
- 1999 Presentations on Panels: "The Potentially Violent Patient: Assessment, Treatment and Legal Liability", "Psychiatrists and the Death Penalty: Bringing Neuroscience to the Law:", "Medicare and Psychiatry: Who, What, Where, When, Why?", "Organized Psychiatry: What Can You Do? What Can You Get?"
- 2000 Presentation, "Risk Management in Psychiatric Practice"
- 2003 Luncheon Speaker, "What's New at CPA?"
- 2004 Luncheon Speaker, "Politics in Washington D.C. and in California Organized Psychiatry"
- 2005 Presentation, "Psychiatry in the 21<sup>st</sup> Century"
- 2006 Presentation, "Negotiation Strategies"
- 2009 Presentation, "Violence and Mental Illness: Review of the Research Literature"

California Association of LPS Hearing Officers Annual Conference:

- 1999 Panel on LPS Reform

Forensic Mental Health Association of California Annual Conference:

- 2001 Presentation, "Outpatient Civil Commitment or Involuntary Outpatient Treatment"

Central California Psychiatric Society

- 2006 Keynote Speaker, "California Legislative Update"

**INVITED PAPERS, LECTURES, PRESENTATIONS NOT LISTED ABOVE:**

- 1979 Lecture to attending psychiatric staff of Sequoia Hospital on "Management of Assaultive and Violent Patients"
- 1979 Program Coordinator, Chair, & Speaker at Conference on "Victims of Assault/Sexual Abuse"
- & sponsored by the University of California, San Francisco
- 1980



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- 1980 Lecture to medical staff of Gladman Hospital on "Evaluation and Treatment of the Violent Patient"
  - 1981 Lecture to attending psychiatric staff of Herrick Hospital on "The Problem of Rape and Establishing a Rape Treatment Center"
  - 1982 Lecture to deputy district attorneys of San Mateo County on "Rape, Rape Trauma Syndrome, and Why Women Don't Report Rape"
  - 1982-1986 Presentation on "Organic Mental Disorders" at annual "General Psychiatry Board Review & Update" sponsored by the University of California, San Francisco
  - 1986 Workshop leader on "The Psychological Effects of Sexual Assault" at the San Francisco Psychoanalytic Institute Conference on "The Importance of Trauma in Psychic Development"
  - 1987 Lecture to postal service employees on Schizophrenia at a symposium on postal service medicine sponsored by the U.S. Postal Service, Western Region
  - 1987 Co-author on paper presented to 1987 Family Violence Research Conference on "Patterns of Family Violence Associated with Acute Mental Illness"
  - 1988 Co-author on paper presented to 1988 annual meeting of American Psychological Association on "Relationships Between Threats and Violent Behavior by Acute Psychiatric Patients"
  - 1988 Co-author on paper presented to American Psychology-Law Society on "Clinical Judgments of Dangerousness as Predictors of Inpatient Violence"
  - 1989 Lecture at Symposium on Assessment of Violence Potential sponsored by Stanford University Department of Psychiatry/Behavioral Science and Palo Alto VA Hospital Department of Psychology/Psychiatry on "Situational Factors Affecting Violence by Psychiatric Patients"
  - 1990 Lecture to attending staff and housestaff at Pacific Presbyterian Medical Center on "Violence by Psychiatric Patients"
  - 1991 Lecture at meeting of San Francisco Psychiatric Society on "Does Money Heal All Wounds? The Course of Psychological Symptoms after Lawsuit Resolution"
  - 1992 Presenter on panel about Sexual Harassment for Alumni Faculty Association of Langley Porter Psychiatric Institute, UCSF
  - 1992 Presenter on panel about Sexual Harassment at USF Law School co-sponsored by the Labor/Employment Law Society and the Women's Law Association
  - 1993 Presenter to Program on Conscious and Unconscious Mental Processes Clinical Research Seminar on "Resilience in Survivors of Childhood Sexual Abuse"
  - 1995 Lecture to attending staff and housestaff at California Pacific Medical Center on "Sexual Harassment"
  - 1996 Grand Rounds lecture to San Mateo Health Services Residency Training Program on "Sexual Harassment: Forensic Issues"
  - 1996 Discussion Group Leader on "Developing Negotiation Skills" at Symposium on Developmental Issues for Women Professionals
  - 1997,99 Lectures to medical staff and nursing staff of Department of Psychiatry at St. Francis Memorial Hospital on "Managing Aggressive Patients on Psychiatric Inpatient Units"
  - 1997 Lecture to Santa Clara County Society of Psychiatric Physicians on "Malpractice: Update for Psychiatrists"
  - 2000 Presenter at UCSF Women's Health 2000 Conference on "Learning to Negotiate: Why It's Important for Women"
  - 2001 Lecture for California Pacific Medical Center Grand Rounds on "Civil Commitment in the Next Millenium"
  - 2001 Grand Rounds lecture at San Francisco Veterans Administration Hospital on "Sexual Harassment and the Courts"
  - 2002 Presenter at UCSF Women's Health Conference on "Principles of Negotiation: Getting What You Want"
  - 2003 Lecture for the Greater Washington DC Chapter of American Academy of Psychiatry and the Law on "Forensic Psychiatrists' Role in Workplace Harassment and Discrimination Litigation"



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- 2003 Presenter on "Risk Management and Psychopharmacology" at The American Society of Clinical Psychopharmacology in New York
- 2004 Grand Rounds at UCSF and at San Francisco General Hospital , "Politics and Policy in Washington D.C."
- 2004 Presenter on "Legal Aspects of Prescribing Psychopharmacologic Drugs" at Conference on Psychiatry for Primary Care
- 2004 Closing Address on "Current Issues in Medical Malpractice" at Conference on Primary Care Medicine: Principles and Practice
- 2005 Speaker at University of California Leadership Institute on "Faculty and Staff Working Together" in San Diego
- 2005 Speaker at Plenary On "Psychiatry/Psychology and the Courts" and Facilitator at "Civil Court" Breakout Session at California Judicial Branch Conference
- 2006 Lecture to Santa Clara County Society of Psychiatric Physicians on "Sexual Harassment"
- 2006 Presenter on "Suicide" at Conference on "New Frontiers in Depression Research"
- 2006 Workshop Leader at UCSF Symposium on Mid-Career Challenges
- 2007 Workshop on "Negotiation in Academia" at Women's Global Health Scholars Program
- 2006, 2007 Presentations for UCSF Medical Students and Hastings Law Students Joint Seminar on Involuntary Treatment and Homelessness
- 2008 Speaker to UCSF first and second year medical students in Brain Interest Group on Forensic Psychiatry
- 2008 Keynote Speaker at Stanford University Adjunct Clinical Faculty Committee Appreciation Day
- 2008 Presentation at Faces of Forensics: Identification and Behavior at Hastings College of the Law
- 2008 Grand Rounds at UCSF Fresno: Psychiatry and the Law
- 2012 Grand Rounds: Mass Murderers: The Role of Psychiatry

**POSTGRADUATE AND CONTINUING EDUCATION COURSES ATTENDED:**

- 1978 Graduate Division Course on Research Methods
- 1979-90 Member of peer supervision group of women psychiatrists in Marin
- 1979-86 Participant in faculty supervision seminar with Dr. Robert Wallerstein
- 1999-00 Law School Classes at Hastings College of Law on "Science in the Law" and "Psychiatry and the Law"
- 2010 Harvard School of Public Health-Program for Chairs of Academic Clinical Departments
- 1976-now Attended sufficient continuing education courses to maintain certification

**UNIVERSITY SERVICE:****SYSTEM-WIDE:**

- 1998-2000 Member of System-Wide Faculty Welfare Committee
- 1999-2000 Member of System-Wide Faculty/Staff Partnership Task Force
- 2000-2001 Vice-Chair of System-Wide Faculty Welfare Committee
- 2001-2002 Chair of University of California System-Wide (for ten campuses) Faculty Welfare Committee and member of Academic Council
- 2009 Ad Hoc committee to review hiring practices at UCSD School of Medicine
- 2012 Presenter at University of California Risk Summit Conference

**CAMPUS-WIDE:**

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1977	Workshop for UC Hospital Social Workers on Rape Prevention and Treatment(Lecture and discussion leader)
1980-81,86-87,95-98	Member and chair of ad hoc review committee for appointments, advancements and promotions to the University of California
1986,89,91,95	Member of campus-wide committee to develop policy and procedures concerning sexual harassment
1987, 1995	Member of ad hoc Moffitt-Long Quality Assurance Committee to investigate alleged inappropriate faculty conduct
1987-90	Sexual harassment complaint advisor for the University of California, San Francisco
1990-95	Member of Chancellor's Advisory Committee on the Status of Women
1990-95	Member of the Faculty Subcommittee of the Chancellor's Advisory Committee on the Status of Women
1995-1996	Member of Credentials Committee of UCSF Medical Center
1997-1998	Member of Faculty Welfare Committee, Academic Senate
1998-1999	Vice-Chair of Faculty Welfare Committee
1999-2001	Chair of Faculty Welfare Committee
1998-2001	Member of Committee on Committees (elected)
2002, 2004, 2006	Member of University Stewardship Review Committees
2006	Presenter and Small Group Leader at Workshop for Junior Faculty Women sponsored by the Chancellor's Advisory Committee on the Status of Women
2006-2011	Presenter and Workshop Leader at Welcoming Week for new faculty at UCSF
2007	Presenter at Chancellor's Advisory Committee on the Status of Women Retreat
2008, 2009	Member of UCSF Lifetime Achievement in Mentoring Award Committee
2009	Member of Committee to Revise Research Misconduct Policy
2010	Presentation on Negotiation Strategies for First Academic Position to Division of General Medicine and Institute of Health Policy fellows and trainees
2011	Joint Administration-Academic Senate Task Force for Five Year Review
2013	Interactive CV Webinar on Managing your CV in ADVANCE
2014	Presenter at Workshop for Mid-Career Faculty
2017	Member of Workgroup on Conflict of Interest and Conflict of Commitment
2017	Presenter at Mentor Training Program for faculty
2017	Member of interview committee for Academic Employee Relations Manager
2019	Presenter Ad Hoc Committee Trainings for faculty misconduct investigations
2019	Presenter at UCSF Threat Management Conference

**SCHOOL OF MEDICINE:**

1978, 1983, 1988, 1993, 1998, 2003	Alumni-Faculty Association correspondent and class chairman for 5 <sup>th</sup> year, 10 <sup>th</sup> year, 15 <sup>th</sup> year, 20 <sup>th</sup> year, 25 <sup>th</sup> year, and 30 <sup>th</sup> year reunion
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1978-80	Pathway advisor for University of California School of Medicine Behavioral Specialist Pathway
1978-82	Member of course committee for second year medical students, Introduction to Clinical Psychiatry (Psychiatry 131 A & B)
1984	Panelist for medical student forum on Careers in Psychiatry
1992	Chair of ad hoc faculty committee to investigate allegations of faculty misconduct
1992-97	Member of Student Welfare Committee
1997-2000	Chair, Student Welfare Committee
1995,97	Member of ad hoc faculty committees to investigate allegations of faculty misconduct
1997-2000	At large School of Medicine Representative to the Representative Assembly of the S.F. Division of the Academic Senate (elected)
2006-2013	Presenter at Pediatric Fellows College on "Dynamics of Negotiation"
2007-2008	Board of Directors of Northern California Institute for Research and Education
2009	Presenter to Faculty of Ob-Gyn and Orthopedics on Academic Advancement
2010	Organizer and Presenter at Division Chief School
2011	Presenter to Ob-Gyn Leadership on Appraisals
2011	Organizer and Presenter at Workshop for Mid-Career Faculty
2014	Presenter to Faculty of Radiation Oncology on Academic Advancement
2014	Presenter to Junior Women Faculty at SFGH on Negotiation
2014	Presenter to Faculty of Family Medicine on Negotiation
2019	Presenter to first year medical students on Talking to Patients about Guns.
2019	Co-Chair Committee for Professional Development for Charis and Directors

**DEPARTMENT OF PSYCHIATRY:**

1977-80	Residency Training Committee
1977-85	Clinical Services Advisory Committee
1980-83, and	
1988-92	Appointments and Promotions Committee for Volunteer Clinical Faculty
1981	Committee to Study Faculty Participation in Governance
1981-82	Search Committee for Director of Adolescent and Young Adult Inpatient Unit
1983-84	Community Practice and Administration Track Subcommittee for the Residency Training Program (co-chair)
1984	Parental Leave Committee for the Residency Training Program
1987	Chairman of Search Committee for Psychiatrist for the Center for the Study of Neurosis
1987-91	Biomedical Research Support Grant Committee to determine the present distribution of BRSG funds following federal regulations and departmental guidelines
1989-90	Member of UCSF-Mt. Zion merger planning committee
1989-90	Member of Mt. Zion-UCSF inpatient psychiatric unit planning committee
1988-89	Member of UCSF Department of Psychiatry Grand Rounds Planning Committee
1990-91	Chairman of Search Committee for Assistant Director of Child and Adolescent Service
1989-92	Chairman of UCSF Department of Psychiatry Grand Rounds Planning Committee
1989-91	Member of Department of Psychiatry Compensation Plan Oversight Committee
1991-92	Chair of Department of Psychiatry Compensation Plan Oversight Committee
1992-94	Chairman of Appointments and Promotions Subcommittee on Clinician-Teacher Faculty Track
1994	Departmental Representative to "San Francisco Psychiatric Associates" to plan for managed care contracts in San Francisco
1994-96	Member of Planning Committee for the Program for Women
1992-98	Appointments and Promotions Committee for Paid Clinical Faculty

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1996-02 Member of Department of Psychiatry Compensation Plan Oversight Committee  
 1998-99 Chair of Department of Psychiatry Compensation Plan Oversight Committee  
 2004-07 Integrated Residency Committee

**LANGLEY PORTER PSYCHIATRIC INSTITUTE/HOSPITAL AND CLINICS:**

1977-78 Environmental and Infection Control Committee (Chairman)  
 1977-85 Executive Medical Board/Executive Committee of the Medical Staff  
 1988-89  
 1997-99  
 1978 Ad Hoc Committee for By-Laws Revision  
 1978-80 Medical Records Committee:  
     1978-79 Vice-Chairman  
     1979-80 Chairman  
 1979-82 President-Elect, President, and Past President of Medical Staff  
 1979-82 Nominating Committee for Executive Medical Board  
 1983 Committee on Hospitalization of Private Patients (Chairman)  
 1984-85 Nominating Committee for Executive Medical Board  
 1984-85 Pharmacy & Therapeutics Committee:  
     1986-87 Vice-Chairman  
     1987-88 Chairman  
 1988-89 Executive Medical Board: Elected Member  
 1989-90 ECT Committee  
 1991-94 Executive Clinical Committee  
 1994 Chairman of Committee to Plan Clinical and Educational Programs on Adult Inpatient Services  
 1994-95 Member of Selection Committee for medical positions at Langley Porter Psychiatric Institute  
 1994-99 Quality Assurance Committee  
 1997-98 Quality Improvement Executive Committee  
 1999-00 Credentials Committee  
 2002-03 ECT Review Committee  
 2008-11 Langley Porter Psychiatric Hospital and Clinics Leadership Committee  
 2008-11 Executive Medical Staff Committee  
 2012-present Chair Morbidity and Mortality Conference  
 2018-present Chair Safety and Security Committee

**PUBLIC SERVICE:**

1976-84 Representative to Community Mental Health Center Clinical Council Meetings  
 1978 Representative to San Francisco Sexual Trauma Advisory Board (to Director of Public Health)  
 1978 Speaker at Pacific Heights Community Forum on Rape Prevention and Treatment  
 1979-80 Member of San Francisco Emergency Services Directors' Task Force  
 1980-81 Psychiatric consultant to study on "Sexual Assault of Patients in Psychiatric Hospitals"  
 1981 Consultant and Moderator for San Mateo County Mental Health Services Workshop on "Rape Awareness, Prevention and Intervention"

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- 1981-83 Consultant to San Mateo County District Attorney's Office for prosecution of sexual assault cases
- 1986 Consultant to San Quentin Prison psychiatrists on "Crisis Intervention and Psychiatry Emergencies"
- 1987 Clinical consultant to San Quentin Prison psychiatrists
- 1995-96 Consultant to Santa Clara Office of County Counsel on Assessment of Violence Risk
- 2000 Consultant to Lanterman-Petris-Short Hearing Officers about proposed changes in California Civil Commitment Laws
- 2006 Presentation to High School Students at SF Public Arts and Technology School on "Politics in the federal government"
- 2007 Presentation to County Public Health Psychiatrists on Mental Health Courts
- 2008 Presentation to Hastings law students in employment and labor law student association on mental illness, stigma, and discrimination
- 2012 Presentation to Commonwealth Club on "Mind, Madness and Gun Violence"
- 2013 Presentation to California Mental Health Planning Council on Violence and Mental Illness
- 2017 Part of 6 member lobbying group representing 500,000 physicians and 6 medical organizations to US. Senate about Health Care Reform

**ADMINISTRATIVE EXPERIENCE:**

- 1976-86 Director of Emergency Services at Langley Porter Psychiatric Institute  
Administrative and clinical responsibility for delivery of services by psychiatric residents, medical students, nurses and psychology fellows in emergency walk-in clinic  
Cost center manager and budget preparation for budget of \$360,000.00
- 1977-90 Director of Crisis Intervention Unit and Psychiatric Intensive Care Unit at Langley Porter Psychiatric Institute  
Administrative and clinical responsibility for delivery of services by psychiatrists, psychiatric residents, medical students, nurses, social workers, psychologists and rehabilitation therapists  
Cost center manager and budget preparation for budget of \$1,400,000.00
- 1978-80 Director of Rape Treatment Center at Langley Porter Psychiatric Institute  
Organized and established the Rape Treatment Center involving coordination with the University of California's Department of Gynecology and Department of Psychiatry, San Francisco Police Department, San Francisco Community Mental Health, San Francisco Department of Public Health, San Francisco District Attorney, Moffitt Emergency Room, Langley Porter Psychiatric Institute and University of California Administration, and Queen's Bench Foundation.
- 1991-99 Director of Adult Inpatient Services (32-bed locked and unlocked units) at Langley Porter Psychiatric Institute  
Administrative and clinical responsibility for delivery of services by psychiatrists, psychiatric residents, medical students, nurses, social workers, psychologists and rehabilitation therapists
- 1999-now Founder and Director of Psychiatry and the Law Program and Fellowship  
Organized program, obtained contracts, developed liaison with law school, and obtained ACGME accreditation for forensic fellowship.
- 2005-2009 Organized Global Health Faculty Scholar Program for faculty in UCSF School of Medicine
- 2008-2011 Interim Chair of Department of Psychiatry and Director of Langley Porter Psychiatric Institute.  
Administrative and academic responsibility for a budget of approximately \$100 million and 176 paid faculty members. Clinical and administrative responsibility for

a hospital with 6000 inpatient days/year, 4000 partial hospitalization days and 30,000 outpatient visits/year.

**TEACHING:****FORMAL SCHEDULED CLASSES FOR UCSF STUDENTS (during last 5 years)**

Academic Year	Course	Nature of Contribution	Class Size
2001- now	Supervision of senior psychiatric resident on the Psychiatry and the Law elective	Organize teaching elective and provide weekly individual supervision	1-2 at a time
2000-now	Preceptor for 4 <sup>th</sup> year elective medical students	Organize teaching elective and provide supervision	1 at a time
2000-now	Didactic Seminar on Psychiatry and the Law	Organize schedule and recruit speakers and teach course	5
2000-now	Landmark Case Seminar	Organize schedule and discuss cases	5
2000-now	Forensic Case Conference	Organize schedule and discuss cases	5
2006-now	Seminars to PGY-2 residents on forensic psychiatry as part of professionalism block	Organize schedule and give lectures	12
2000-now	Tutorial on Civil Litigation	Discussion and supervision of civil cases	2
2000-now	Forensic Research Seminar	Discussion of research topics	9
2006, 2007	Psychiatry and the Law for 1 <sup>st</sup> and 2 <sup>nd</sup> year medical students	Lecture	20

**UCSF DEPARTMENT OF PSYCHIATRY GRAND ROUNDS PRESENTATIONS:**

1977	"Working Through of Patients' Suicides by Four Therapists in Training"
1979	"Rape"
1985	"New Research on Violence"
1986	"Treatment Dilemmas Following Neuroleptic Malignant Syndrome"
1989	"Use of Clozapine in Schizophrenia"
1993	"Sexual Harassment" – Psychiatry Grand Rounds at San Francisco General Hospital
1994	"Confidentiality: Legal Issues for Mental Health Professionals"
2002	Coordinator of Forensic Series of Grand Rounds and Co-Presenter on "Serial Killers"
2004	Politics and Policy in Washington D.C.
2006	Covert medications: Legal and Ethical Issues-Grand Rounds at Veterans Hospital
2006-12	Workshops on Risk Assessment for Violence and Suicide
2012	After the Tucson and Aurora Shootings: The Role of Forensic Psychiatry
2013	Clinical and Legal Management of a Violent Threatening Patient with Psychosis
2018	Child Pornography: Clinical and Legal Issues

**TEACHING AIDS PREPARED:**

1983-84 Wrote syllabus chapter for Psychiatry 131A & B



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- 1987-94 Prepared syllabus for psychiatric section of Medicine 111  
 1996 Prepared syllabus for Workplace Violence conference

**FACULTY MENTORSHIP PROGRAM:**

- 1991-present Mentor in the departmental Faculty Mentorship Program and mentor for medical school faculty in all departments  
 2014 Faculty Mentoring Lunchtime Session –Presenter on Advancement and Promotion

**TEACHING AWARDS:**

- 2006 Psychiatry Residents Association Award for “Excellence in Teaching”

**RESEARCH AND CREATIVE ACTIVITIES:****PEER REVIEWED ARTICLES:**

- 1979 Binder RL: Use of Seclusion on an Inpatient Crisis Intervention Unit. Hospital and Community Psychiatry 30:266-269  
 1979 Kolodny S, Binder RL, Bronstein AA, and Friend RL: The Working Through of Patients' Suicides by Four Therapists. Suicide and Life Threatening Behavior 9:33-46  
 1980 Binder RL and Dickman WA: Psychiatric Manifestations of Neurosyphilis in Middle-Aged Patients. American Journal of Psychiatry 137:741-742  
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#### NON-PEER REVIEWED PUBLICATIONS AND OTHER CREATIVE ACTIVITIES:

##### Books and Chapters:

- 1984, 1988, Binder RL: Organic Mental Disorders. Chapter in *Review of General Psychiatry*. Edited by H. Goldman. Lange Medical Publications. (First, Second and Third Editions)
- 1992
- 1995 Haller E and Binder RL: Delirium, Dementia, and Amnestic Disorders. Chapter in *Review of General Psychiatry*, Edited by H. Goldman, Lange Medical Publications (Fourth Edition)
- 1991 Binder RL: The Mental Health Professional and the Legal System. GAP Committee on Psychiatry and the Law. Brunner/Mazel, Inc. (Member of Committee authoring book)
- 1995 Binder RL: Women Clinicians and Patient Assaults. Chapter in *Patient Violence and the Clinician (Clinical Practice Series #30)*. Edited by Burr Eichelman and Anne Hartwig. American Psychiatric Press pp.21-32

##### Teaching Aids and Resource Documents:

- 1993-94 American Psychiatric Association Videotape and Study Guide, "Preserving Confidentiality: A Videotaped Guide for Psychiatrists" (Organizer and coordinator of scriptwriting, producing and directing of videotape and preparing the study guide)
- 1995 American Psychiatric Association Practice Guideline for Psychiatric Evaluation of Adults. *American Journal of Psychiatry Supplement*: 66-80 (I was a member of work group that developed guidelines)

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- 1998 Binder RL: American Psychiatric Association Resource Document on Controversies in Child Custody. J Am Acad Psychiatry Law. 26:267-276 (I was the chair of the work group that developed this resource document.)
- 1999 American Psychiatric Association Resource Document on Mandatory Outpatient Treatment [I was a co-author of the document.]
- 2006 American Psychiatric Association Practice Guideline for the Psychiatric Evaluation of Adults, Second Edition. American Journal of Psychiatry Supplement 163 [I was a member of the work group that wrote the guidelines.]

**Other Publications:**

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